chartered, applicable to this part." (Health & Saf. Code, § 18300, subd. (a).) The few exemptions from this prohibition are carefully delineated.[3]

Then there is the Mobilehomes—Manufactured Housing Act of 1980 (Health & Saf. §§ 18000-18153), which regulates the sale, licensing, registration, and titling of

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[3] "This part shall not prevent local authorities of any city, county, or city or county, within the reasonable exercise of their police powers, from doing any of the following:

"(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks.

"(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted thereto.

"(3) From requiring a permit to use a manufactured home or mobilehome outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes and mobilehomes, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

"(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, under circumstances when this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department [i.e., the state Department of Housing and Community Development].

"(5) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park." (Health & Saf. Code, § 18300, subd. (g).)

mobilehomes. The Legislature declared that the provisions of this measure "apply in all parts of the state and supersede" any conflicting local ordinance. (Health & Saf. Code, § 18015.) The HCD is in charge of enforcement. (Health & Saf. Code, §§ 18020, 18022, 18058.)

These statutory schemes indicate that the state is clearly the dominant actor on this stage. Under the Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with the authority to formulate "specific requirements relating to construction, maintenance, occupancy, use, and design" of mobilehome parks (Health & Saf. Code, § 18253; see also Health & Saf. Code §§ 18552 [HCD to adopt "building standards" and "other regulations for . . . mobilehome accessory buildings or structures"], 18610 [HCD to "adopt regulations to govern the construction, use, occupancy, and maintenance of parks and lots within" mobilehome parks"], 18620 [HCD to adopt "regulations regarding the construction of buildings in parks that it determines are reasonably necessary for the protection of life and property"], 18630 [plumbing], 18640 ["toilet, shower, and laundry facilities in parks"], 18670 ["electrical wiring, fixtures, and equipment . . . that it determines are reasonably necessary for the protection of life and property"].)

At present, the HCD has promulgated hundreds of regulations that are collected in chapter 2 of title 25 of the California Code of Regulations. (Cal. Code Regs, tit. 25, §§ 1000-1758.) The regulations exhaustively deal with a myriad of issues, such as "Electrical Requirements" (*id.*, 25, §§ 1130-1190), "Plumbing Requirements" (*id.*, §§ 1240-1284), "Fire Protection Standards" (*id.*, §§ 1300-1319), "Permanent Buildings" (*id.*, §§ 1380-1400), and "Accessory Buildings and Structures" (*id.*, §§ 1420-1520). The regulations even deal with pet waste (*id.*, § 1114) and the prohibition of cooking facilities in cabanas (*id.*, § 1462).

Once adopted, HCD regulations "shall apply to all parts of the state." (Health & Saf. Code, § 18300, subd. (a).) Mobilehomes can only be occupied or maintained when they conform to the regulations. (Health & Saf. Code, §§ 18550, 18871.) Enforcement is shared between the HCD and local governments (Health & Saf. Code, § 18300, subd. (f),

18400, subd. (a)), with HCD given the power to "evaluate the enforcement" by units of local government. (Health & Saf. Code, § 18306, subd. (a).) A locality may decline responsibility for enforcement, but if assumed and not actually performed, its enforcement power may be taken away by the HCD. (Health & Saf. Code, § 18300, subds. (b)-(e).) Local initiative is restricted to traditional police powers of zoning, setback, permit requirements, and regulating construction of utilities. (Gov. Code, § 65852.7; Health & Saf. Code, § 18300, subd. (g), quoted at fn. 3, *ante*.)

It is the state that determines which events and actions in the construction and operation of a mobilehome park require permits. (Health & Saf. Code, §§ 18500, 18500.5, 18500.6, 18505; Cal. Code Regs, tit. 25, §§ 1006.5, 1010, 1014, 1018, 1038, 1306, 1324, 1374.5.) Even if the locality issues the annual permit for a park to operate, a copy must be sent to the HCD. (*Id.*, §§ 1006.5, 1012.) It is the state that fixes the fees to be charged for these permits and certifications (Health & Saf. Code, §§ 18502, 18503; Cal. Code Regs, tit. 25, §§ 1008, 1020.4, 1020.7, 1025), and sets the penalties to be imposed for noncompliance. (Health & Saf. Code §§ 18504, 18700; Cal. Code Regs, tit. 25, §§ 1009, 1050, 1370.4.) Sometimes, the state assumes exclusive responsibility for certain subjects, such as for earthquake-resistant bracing systems. (Cal. Code Regs, tit. 25, § 1370.4(a).)

Additional provisions respecting mobilehome parks are in the Government Code. Cities and counties cannot decide that a mobilehome park is not a permitted use "on all land planned and zoned for residential land use as designated by the applicable general plan," though the locality "may require a use permit." (Gov. Code, § 65852.7.) "[I]t is clear that the Legislature intended to limit local authority for zoning regulation to the specifically enumerated exceptions [in Health and Safety Code section 18300, subdivision (g), quoted at fn. 3, *ante*] of where a mobilehome park may be located, vehicle parking, and lot lines, not the structures within the parks." (*County of Santa Cruz v. Waterhouse*, *supra*, 127 Cal.App.4th 1483, 1493.) A city or county must accept installation of mobilehomes manufactured in conformity with federal standards. (Gov. Code, § 65852.3, subd. (a).) Their power to impose rent control on mobilehome parks is

restricted if the parks qualifies as "new construction." (Gov. Code, § 65852.11, subd. (a); cf. text accompanying fn. 2, *ante*.)

This survey demonstrates that the state has a long-standing involvement with mobilehome regulation, the extent of which involvement is, by any standard, considerable. Having outlined the size of the state's regulatory footprint, it is now time to examine the details of section 66427.5 and the Ordinance.

Section 66427.5

Section 66427.5 is a fairly straight-forward statute addressing the subject of how a subdivider shall demonstrate that a proposed mobilehome park conversion will avoid economic displacement of current tenants who do not choose to become a purchasing resident. In its entirety it provides as follows:

"At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

"(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

"(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

"(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

"(d)(1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

"(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

"(3) The survey shall be obtained pursuant to a written ballot.

"(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

"(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

"(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

"(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:.

"(1) As to nonpurchasing residents who are not lower income households, as defined by Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

"(2) As to nonpurchasing residents who are lower income households, as defined by Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

This is how section 66427.5 currently reads. But its antecedents are instructive.

The first version of section 66427.5, enacted in 1991, was no more than the first paragraph and subdivision (f) of the current version. (Stats. 1991, ch. 745, § 2.) The statute was substantially amended four years later with most of what is in the current version. The only significant variance is that the 1995 version did not contain what is

now subdivision (d), specifying that the subdivider is to provide a survey of support. (Stats. 1995, ch. 256, § 5.) The second version of section 66427.5 was the one considered by the Court of Appeal in *El Dorado Palm Springs, Ltd., v. City of Palm Springs* (2002) 96 Cal.App.4th 1153 (*El Dorado*).

At issue in *El Dorado* was a mobilehome park owner's application to convert its units from rental to resident-owned. The renters opposed the conversion, "contending that they do not have enough information to decide whether to purchase or not, and the proposed conversion is merely a sham to avoid [Palm Springs'] rent control ordinance." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1159.) The Palm Springs City Council approved the application, but made its approval subject to three conditions, requiring: "1) the use of a 'Map Act Rent Date,' defined as the date of the close of escrow of not less than 120 lots; (2) the use of a sale price established by a specified appraisal firm, the appraisal costs to be paid by [the owner-subdivider]; and (3) financial assistance to all residents in the park to facilitate their purchase of the lots underlying their mobilehomes." (*Id.* at pp. 1156-1157.)

The trial court denied the park owner's petition for a writ of administrative mandamus. The owner appealed, contending "that its application is governed by section 66427.5. It relies on subdivision (d) [now subdivision (e)] of that section, which states, in part, that the scope of the City Council's hearing is limited to the issue of compliance with the requirements of that section." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1157-1158.) Palm Springs took the position that the conditions were authorized by Government Code section 66427.4, subdivision (c),[4] which authorized the city council to " 'require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.' " (*Id.* at p. 1158.)

[4] Subsequent statutory references are to the Government Code unless otherwise indicated.

The Court of Appeal agreed with the owner and reversed. It rejected Palm Springs' argument about section 66427.4,[5] concluding that it applied only when the mobilehome park is being converted to another use: "[I]t would not apply to conversion of a mobilehome park when the property's use as a mobilehome park is unchanged. The section would only apply if the mobilehome park was being converted to a shopping center or another different use of the property. In that situation, there would be 'displaced mobilehome park residents' who would need to find 'adequate space in a mobilehome park' for their mobilehome and themselves." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1161.) The court also held the language of subdivision (e) of section 66427.4 dispositive on this point. (*Id.* at pp. 1161-1163.)

But, and as particularly apt here, the court sustained the park owner's argument about section 66427.5, subdivision (d), concluding that under it the city council "only had the power to determine if [the subdivider] had complied with the requirements of the section." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1163-1164.) Although the court did

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[5] At all relevant times, section 66427.4 has provided:

"(a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

"(b) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

"(c) The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

"(d) This section establishes a minimum standard for local legislation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

"(e) This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership."

appear concerned that the conversion process might be used for improper purposes—such as the bogus purchase of a single unit by the subdivider/owner to avoid local rent control—it believed the language of section 66427.5, subdivision (d), did not allow such considerations to be taken into account: "[T]he City lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City's authority, it has not done so. We therefore agree with appellant that the argument that the Legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one."[6] (*Id.* at p. 1165.) And, the court later noted, "there is no evidence that [the owner's] filing of an application for approval of a tentative parcel map is not the beginning of a bona fide conversion to resident ownership." (*Id.* at p. 1174, fn. 17.)

One other point of *El Dorado* is significant. The court specifically rejected arguments that would require a numerical threshold before a conversion could proceed, there being no statutory support for the claim that conversion only occurred if more than 50 percent of the lots have been sold before a tentative or parcel map is filed. (*El Dorado, supra*, 96 Cal.App.4th 1153, 1172-1173) The court refused to require a subdivider to demonstrate that the proposed subdivision has the support of a majority of existing residents—fixed at either one-half or two-thirds—thus satisfying the local

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[6] Nevertheless, the *El Dorado* court did seem to indicate that there was an available remedy for Palm Springs' fears concerning evasion of its rent control ordinance. Although local authorities could not themselves use section 66427.5 to halt "sham or failed transactions in which a single unit is sold, but no others," (*El Dorado, supra,* 96 Cal.App.4th at p. 1166, fn. 10) there was no such restriction on the judiciary. "[T]he courts will not apply section 66427.5 to sham or failed transactions," (*id.* at p. 1165) which the *El Dorado* court apparently equated with situations where "conversion fails" or "if the conversion is unsuccessful." (*Id.* at p. 1166.) The court also agreed with an earlier decision that held section 66427.5 does not apply unless there is an actual sale of at least one unit. (*Id.* at pp. 1166, 1177-1179, citing *Donohue v. Santa Paula West Mobile Home Park* (1996) 47 Cal.App.4th 1168.)

authority that this was not a "forced conversion."[7] (*Id.* at pp. 1181-1182.) The court concluded: "The legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent." (*Id.* at p. 1182.)

Following *El Dorado*, the continuing problem of mobilehome park conversion, and the phrase "bona fide," again engaged the Legislature's attention. That same year the Legislature amended section 66427.5 by adding what is now subdivision (d) and the requirement of a "survey of support of residents" whose results were to be filed with the tentative or parcel map. As it did so, the Legislature enacted the following language, but did not include it as part of section 66427.5: "It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in El Dorado Palm Springs, Ltd. V. City of Palm Springs (2002) 96 Cal.App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent non-bona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act

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[7] The 50 percent argument was based on Health and Safety Code section 50781, subdivision (m), which specifies that one of the definitions of "residential ownership" is "ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park." The argument was that "resident ownership of the park, and control of operations of the park, can occur only when the purchasing residents have the ability to control, manage and own the common facilities in the park, i.e., when 50 percent plus 1 of the lots have been purchased by the residents." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1172, 1181.) The two-thirds figure was taken from Government Code section 66428.1, which provides that "When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived," subject to specified exceptions.

to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions." (Stats. 2002, ch. 1143, § 2.)[8]

The Ordinance

The Ordinance has eight sections, but only three—sections I, II, and III—are pertinent to this appeal.[9]

Section I declares the purposes of the Ordinance. It opens with the supervisors' finding that "the adoption of this Ordinance is necessary and appropriate to implement certain policies and programs set forth within the adopted General Plan Housing Element, and to comply with state laws related to the conversion of mobile home parks to resident ownership. Specific purposes included: (1) "To implement state laws with regard to the conversion of mobile home parks to resident ownership;" (2) "To ensure that conversions of mobile home parks to resident ownership are bona fide resident conversions in accordance with state law;" (3) To implement the goals and policies of the General Plan Housing Element; (4) "To balance the need for increased homeownership opportunities with the need to protect existing rental housing opportunities;: (5) "To provide adequate

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[8] This is what is known as "plus section," which our Supreme Court termed "a provision of a bill that is not intended to be a substantive part of the code section or general law that the bill enacts, but to express the Legislature's view on some aspect of the operation or effect of the bill. Common examples of 'plus sections' include severability clauses, savings clauses, statements of the fiscal consequences of the legislation, provisions giving the legislation immediate effect or a delayed operative date or a limited duration, and provisions declaring an intent to overrule a specific judicial decision or an intent not to change existing law." (*People v. Allen* (1999) 21 Cal.4th 846, 858-859, fn. 13.) The court subsequently explained that "statements of the intent of the enacting body . . . , while not conclusive, are entitled to consideration. [Citations.] Although such statements in an uncodified section do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute." (*People v. Canty* (2004) 32 Cal.4th 1266, 1280.)

[9] Section IV of the Ordinance declares that the measure is "categorically exempt from environmental review" under the California Environmental Quality Act. Section V is a severability provision. Section VI establishes the effective date of the Ordinance as "30 days after the date of its passage." Section VII repeals an existing ordinance. Section VIII (mislabeled as "Section VI") provides for publication of the Ordinance in a specified newspaper of general circulation in the county.

disclosure to decision-makers and to prospective buyers prior to conversion of mobile home parks to resident ownership;" (6) "To ensure the public health and safety in converted parks; and" (7) "To conserve the County's affordable housing stock."

Section II deals with the "Applicability" of the Ordinance by declaring that "These provisions apply to all conversions of mobile home parks to resident ownership, except those conversions for which mapping requirements have been waived pursuant to Government Code [Section] 66428.1 These provisions do not apply to the conversion of a mobile home park to an alternate use, which conversions are regulated by Government Code Sections 65863.7 and 66427.4, and by Section 26-92-090 of Chapter 26 of the Sonoma County Code."

Section III opens by providing several definitions of terms used in the Ordinance and in Chapter 25 of the Sonoma County Code.

" '**Mobile Home Park Conversion to Resident Ownership** means the conversion of a mobile home park composed of rental spaces to a condominium or common interest development, as described in and/or regulated by Government Code Sections 66427.5 and/or 66428.1.' "

" '**Mobile Home Park Closure, Conversion or Change of Use** means changing the use of a mobile home park such that it no longer contains occupied mobile or manufactured homes, as described in and regulated by Government Code Section 66427.4.' "

" '**Subdivision**' means the division of any improved or unimproved land, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, financing, conveyance, transfer, or any other purpose, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. Subdivision includes a condominium project or common interest development, as defined in Section 1351 of the Civil Code or a community interest project, as defined in Section 11004 of the Business and Professions Code. Any conveyance of land to a

governmental agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels.' "

The heart of the Ordinance is subdivision (d) of Section III, which adds "a new Article IIIB" to Chapter 25 of the Sonoma County Code. Because of its importance, we quote it in full:

"Article IIIB. Mobile Home Park Conversions to Resident Ownership.

"25-39.7 (a). Applicability. The provisions of this Article XIIIB shall apply to all conversions of mobile home parks to resident ownership except those conversions for which mapping requirements have been waived pursuant to Government Code § 66428.1.

"25-39.7 (b). Application Materials Required.

"(1) In addition to any other information required by this Code and/or other applicable law, the following information is required at the time of filing of an application for conversion of a mobile home park to resident ownership:

"a) A survey of resident support conducted in compliance with subdivision (d) of Government Code Section 66427.5 The subdivider shall demonstrate that the survey was conducted in accordance with an agreement between the subdivider and an independent resident homeowners association, if any, was obtained pursuant to a written ballot, and was conducted so that each occupied mobile home space had one vote. The completed survey of resident support ballots shall be submitted with the application. In the event that more than one resident homeowners association purports to represent residents in the park, the agreement shall be with the resident homeowners association which represented the greatest number of resident homeowners in the park.

"b) A report on the impact of the proposed conversion on residents of the mobile home park. The tenant impact report shall, at a minimum include all of the following:

"i) Identification of the number of mobile home spaces in the park and the rental rate history for each such space over the four years prior to the filing of the application;

"ii) Identification of the anticipated method and timetable for compliance with Government Code Section 66427.5 (a), and, to the extent available, identification of

the number of existing tenant households expected to purchase their units within the first four (4) years after conversion;

"iii) Identification of the method and anticipated time table for determining the rents for non-purchasing residents pursuant to Government Code Section 66427.5 (f)(1), and, to the extent available, identification of tenant households likely to be subject to these provisions;

"iv) Identification of the method for determining and enforcing the controlled rents for non-purchasing households pursuant to Government Code Section 66427.5 (f)(2), and, to the extent available, identification of the number of tenant households likely to be subject to these provisions;

"v) Identification of the potential for non-purchasing residents to relocate their homes to other mobile home parks within Sonoma County, including the availability of sites and the estimated cost of home relocation;

"vi) An engineer's report on the type, size, current condition, adequacy and remaining useful life of common facilities located within the park, including but not limited to water systems, sanitary sewer, fire protection, storm water, streets, lighting, pools, playgrounds, community buildings and the like. A pest report shall be included for all common buildings and structures. 'Engineer' means a registered civil or structural engineer, or a licensed general engineering contractor;

"vii) If the useful life of any of the common facilities or infrastructure is less than thirty (30) years, a study estimating the cost of replacing such facilities over their useful life, and the subdivider's plan to provide funding for the same;

"viii) An estimate of the annual overhead and operating costs of maintaining the park, its common areas and landscaping, including replacement costs as necessary, over the next thirty (30) years, and the subdivider's plan to provide funding for the same.

"ix) Name and address of each resident, and household size.

"x) An estimate of the number of residents in the park who are seniors or disabled. An explanation of how the estimate was derived must be included.

"(c) A maintenance inspection report conducted on site by a qualified inspector within the previous twelve (12) calendar months demonstrating compliance with Title 25 of the California Code of Regulations ('Title 25 Report'). Proof of remediation of any Title 25 violations shall be confirmed in writing by the California Department of Housing and Community Development (HCD).

"25-39.7 (c) Criteria for Approval of Conversion Application.

"(1) An application for the conversion of a mobile home park to resident ownership shall be approved only if the decision maker finds that:

"a) A survey of resident support has been conducted and the results filed with the Department in accordance with the requirements of Government Code Section 66427.5 and this Chapter;

"b) A tenant impact report has been completed and filed with the Department in accordance with the requirements of Government Code Section 66427.5 and this Chapter;

"c) The conversion to resident ownership is consistent with the General Plan, any applicable Specific or Area Plan, and the provisions of the Sonoma County Code;

"d) The conversion is a bona-fide resident conversion;

"e) Appropriate provision has been made for the establishment and funding of an association or corporation adequate to ensure proper long-term management and maintenance of all common facilities and infrastructure; and

"f) There are no conditions existing in the mobile home park that are detrimental to public health or safety, provided, however, that if any such conditions exist, the application for conversion may be approved if: (1) all of the findings required under subsections (a) through (e) are made and (2) the subdivider has instituted corrective measures adequate to ensure prompt and continuing protection of the health and safety of park residents and the general public.

"(2) For purposes of determining whether a proposed conversion is a bona-fide resident conversion, the following criteria shall be used:

"a) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and this Chapter shows that more than 50 percent of resident households support the conversion to resident ownership, the conversion shall be presumed to be a bona-fide resident conversion.

"b) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and with this Chapter shows that at least 20 percent but not more than 50 percent of residents support the conversion to resident ownership, the subdivider shall have the burden of demonstrating that the proposed conversion is a bona-fide resident conversion. In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success as determined by the decision-maker, is in place to convey the majority of the lots to current residents of the park within a reasonable period of time.

"c) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and this Chapter shows that less than 20 percent of residents support the conversion to resident ownership, the conversion shall be presumed not to be a bona-fide resident conversion.

"25-39.7 (d) Tenant Notification. The following tenant notifications are required:

"(1) Tenant Impact Report. The subdivider shall give each resident household a copy of the impact report required by Government Code Section 66427.5 (b) within fifteen (15) days after completion of such report, but in no case less than fifteen (15) days prior to the public hearing on the application for conversion. The subdivider shall also provide a copy of the report to any new or prospective residents following the original distribution of the report.

"(2) Exclusive Right to Purchase. If the application for conversion is approved, the subdivider shall give each resident household written notice of its exclusive right to contract for the purchase of the dwelling unit or space it occupies at the same or more favorable terms and conditions than those on which such unit or space shall be initially offered to the general public. The right shall run for a period of not less than ninety (90) days from the issuance of the subdivision public report ('white paper') pursuant to

California Business and Professions Code § 11018.2, unless the subdivider received prior written notice of the resident's intention not to exercise such right.

"(3) Right to Continue Residency as Tenant. If the application for conversion is approved, the subdivider shall give each resident household written notice of its right to continue residency as a tenant in the park as required by Government Code Section 66427.5 (a)."

The Ordinance is Expressly Preempted by Section 66427.5

It is a given that regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government. (E.g., *Big Creek*, *supra*, 38 Cal.4th 1139, 1151; *IT Corp. v. County of Solano* (1991) 1 Cal.4th 81, 85, 95, 99; *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 376.) We are also mindful that our Supreme Court has twice held, prior to enactment of section 66427.5, that the Subdivision Map Act did not preempt local authority to regulate residential condominium conversions. (*Griffin Development Co. v. City of Oxnard* (1985) 39 Cal.3d 256, 262-266; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 868-869.) Given the presumption against preemption (*Big Creek*, *supra*, 38 Cal.4th 1139, 1149), we start by assuming that the Ordinance is valid.

However, this attitude does not long survive. The survey of state legislation already undertaken demonstrates that the state has taken for itself the commanding voice in mobilehome regulation. Localities are allowed little scope to improvise or deviate from the Legislature's script. The state's dominance was in place before the subject of mobilehome park conversion was introduced into the Subdivision Map Act in 1991. (See Stats. 1991, ch. 745, §§ 1-2, 4, adding §§ 66427.5, 66428.1, & amending § 66427.4 to cover mobilehome park conversions.) This was seven years after the State had declared itself in favor of converting mobilehome parks to resident ownership, and at the same time established the Mobilehome Park Purchase Fund from which the HCD could make loans to low-income residents and resident organizations to facilitate conversions. (Stats. 1984, ch. 1692, § 2, adding Health & Saf. Code, §§ 50780-50786.)

Although the Court of Appeal in *El Dorado* did not explicitly hold that section 66427.5 was an instance of express preemption, that is clearly how it read the statute. And although there is nothing in the text of section 66427.5 that at first glance looks unambiguously like a stay-away order from the Legislature to cities and counties,[10] there is no doubt that the *El Dorado* court construed the operative language as precluding addition by cities or counties. That operative language reads: "The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the [tentative or parcel] map. *The scope of the hearing shall be limited to the issue of compliance with this section.*" (§ 66427.5, subd. (e), italics added.) The italicized language is, in its own way, comprehensive. But the contrasting constructions the parties give it could not be more starkly divergent.

According to Sequoia, section 66427.5 has an almost ministerial operation. The words of the statute "communicate unambiguously that local agencies must approve a mobilehome park subdivision map if the applicant complies with 'this section' alone." The County and supporting amici argue that section 66427.5 and *El Dorado* are not dispositive here. Indeed, they almost argue that the statute and the decision are not relevant. As they see it, section 66427.5—both before and after *El Dorado*—is a statute of very modest scope, addressing itself only to the issue of avoiding and mitigating the economic displacement of residents who will not be purchasing units when the mobilehome park is converted. All the Ordinance does, they maintain, is "implement" and flesh out the details of the Legislature's directive in a wholly appropriate fashion, leaving unimpaired the traditional local authority over land uses. As the amici state it: "Ordinance No. 5725 does not purport to impose any additional economic restrictions to preserve affordability or to avoid displacement."

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[10] Such as the provision of the Mobilehome Parks Act directing that "This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part." (Health & Saf. Code, § 18300, subd. (a).)

We admit that there is no little attraction to the County's approach. Beginning with the presumption against preemption in the area of land use, it is more than a little difficult to see the Legislature as accepting that approval of a conversion plan is dependent only on the issues of resident support and the subdivider's efforts at avoiding economic displacement of nonpurchasing residents. Section 66427.5 does employ language that seems to accept, if not invite, supplementary local action.[11] For example, a subdivider is required to "file a report on the impact of the conversion upon residents," but the Legislature made no effort to spell out the contents of such a report. And there is some force to the rhetorical inquiry posed by amici: "Surely, the Legislature intended that the report have substantive content . . . . [¶] . . . [¶] If there can be no assurance as to the contents of the [report], it may become a meaningless exercise."

However, a careful examination of the relevant statutes extracts much of the appeal in the County's approach. There are three such statutes—sections 66247.4, 66247.5, and 66428.1. And if they are considered as a unit—which they are, as the three mobilehome conversion statutes in the Subdivision Map Act[12]—a coherent logic begins to emerge.

It must be recalled that the predicate of the statutory examination is a functioning park with existing tenants with all necessary permits and inspections needed for current operation. As Sequoia points out: "Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general plans, and subjected to applicable health and safety regulations." Moreover, the park has

[11] The County and supporting amici note our Supreme Court stating that the Subdivision Map Act "sets suitability, design, improvement and procedural requirements [citations] and allows local governments to impose *supplemental requirements of the same kind.*" (*The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 659, italics added.) It must be emphasized, however, that the court's comments were made in the context of a local tax—and a decade before the subject of mobilehome park conversion began appearing in the Subdivision Map Act.

[12] Because sections 66427.4, 66427.5, and 66428.1 all deal with the subject of mobilehome park conversions, it is appropriate to consider them together. (E.g., *Walker v. Superior Court* (1988) 47 Cal.3d 112, 124, fn. 4; *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639; *In re Washer* (1927) 200 Cal. 599, 606.)

been inspected and relicensed on an annual basis. But the owner has decided to change. If the change is to close the park and devote the land to a different use, section 66427.4 governs. If the change is a more modest switch to residential conversion, sections 66427.5 and 66428.1 are applicable.

These statutes form a rough continuum. If the owner is planning a new use, that is, leaving the business of operating a mobilehome park, section 66427.4 (quoted in full at fn. 5, *ante*) directs the owner to prepare a report on the impact of the change to tenants or residents. (Subd. (a).) The relevant local authority "may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park" as a condition of approving or conditionally approving the change. (Subd. (c).) But in this situation—where the land use question is essentially reopened de novo—section 66427.4 explicitly authorizes local input: "This section establishes *a minimum standard for local regulation* of conversions of mobilehome parks into other uses *and shall not prevent a local agency from enacting more stringent measures*." (Subd. (d), italics added.)

At the other end of the continuum is the situation covered by section 66428.1, subdivision (a) of which provides: "When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived unless any of the following conditions exist: [¶] (1) There are design or improvement requirements necessitated by significant health or safety concerns. [¶] (2) The local agency determines that there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map. [¶] (3) The existing parcels which exist prior to the proposed conversion were not created by a recorded parcel or final map. [¶] (4) The conversion would result in the creation of more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion."

So, if the conversion essentially maintains an acceptable status quo, the conversion is approved by operation of law. And the locality has no opportunity or power to stop it, or impose conditions for its continued operation.

Section 66427.5 occupies the midway point on the continuum. It deals with the situation where the mobilehome park will continue to operate as such, merely transitioning from a rental to an ownership basis, and there is not two-thirds tenant support for the change—in other words, conversions that enjoy a level of tenant concurrence that does not activate the free ride authorized by section 66428.1 In those situations, the local authority enjoys less power than granted by section 66427.4, but more than conversions governed by 66428.1. It is not surprising that in this middle situation that the Legislature would see fit to grant local authorities some power, but circumscribe the extent of that power. That it what section 66427.5 does. It says in effect: Local authority, you have this power, but no more.

As previously mentioned, the Legislature amended section 66427.5 in the wake of *El Dorado*. Two features of that amendment are notable. First, the Legislature added what is now the requirement in subdivision (d) of a survey of tenant support for the conversion, when the level of that support does not reach the two-thirds mark at which point section 66428.1 kicks in. But the Legislature did not address the point noted in *El Dorado* that there is no minimum amount of tenant support required for a conversion to be approved. (See *El Dorado*, *supra*, 96 Cal.App.4th 1153, 1172-1173.) As this was the only addition to the statute, if follows that it was deemed sufficient to address the problem of "bona fide" conversions mentioned in the unmodified portion of the enactment that accompanied the amendment.

Second, and even more significant for our purposes, the *El Dorado* court expressly read section 66427.5 as not permitting a local authority to inject any other consideration into its decision whether to approve a subdivision conversion.[13] (*El Dorado*, *supra*,

[13] *El Dorado* is also authority for rejecting the County's attempt to narrow the scope of the section 66427.5 hearing to just the issue of tenant displacement, thereby presumably leaving other issues or concerns of the conversion application to be addressed at a different hearing. The *El Dorado* court treated the section 66427.5 hearing as the

96 Cal.App.4th 1153, 1163-1164, 1166, 1182.) And when it amended section 66427.5, the Legislature did nothing to overturn the *El Dorado* court's reading of the extent of local power to step beyond the four corners of that statute. This is particularly telling: " '[W]hen the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment.' " (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1156, quoting *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734; accord, *People v. Meloney* (2003) 30 Cal.4th 1145, 1161; *People v. Ledesma* (1997) 16 Cal.4th 90, 100-101.)

The foregoing analysis convinces us that the *El Dorado* construction of section 66427.5 has stood the test of time and received the tacit approval of the Legislature. We therefore conclude that what is currently subdivision (e) of section 66427.5 continues to have the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis.

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equivalent of "El Dorado's application for approval of the tentative subdivision map." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1163-1164; see also *id.*, at pp. 1174 ["section 66427.5 applies to El Dorado's application for tentative map approval"], 1182 [absence of majority tenant support for conversion not dispositive because "The owner can still subdivide his property by following . . . section 66427.5"; judgment reversed "with directions to require the City Council to promptly determine the sole issue of whether El Dorado's application for approval of a tentative parcel map complies with section 66427.5"].) Even more germane is that, to judge from the language used in the uncodified provision enacted with the amendment of section 66427.5, the Legislature clearly appeared to equate compliance with section 66427.5 with the conversion approval process.

The Ordinance is Impliedly Preempted

As previously shown, local law is invalid if it enters a field fully occupied by state law, or if it duplicates, contradicts, or is inimical, to state law. (*O'Connell v. City of Stockton*, *supra*, 41 Cal.4th 1061, 1068; *Big Creek*, *supra*, 38 Cal.4th 1139, 1150.) The three tests for implied preemption are: (1) has the issue been so completely covered by state law as to indicate that the issue is now exclusively a state concern; (2) the issue has been only partially covered by state law, but the language of the state law indicates that the state interest will not tolerate additional local input; and (3) the issue has been only partially covered by state law, but the negative impact of local legislation on the state interest is greater than whatever local benefits derive from the local legislation. (*O'Connell v. City of Stockton*, *supra*, at p. 1150; *Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th 725, 751; *People ex rel. Deukmejian v. County of Mendocino*, *supra*, 36 Cal.3d 476, 485.) We conclude that the County's Ordinance is also vulnerable to two of the tests for implied preemption.

The overview of the regulatory schemes touching mobilehomes undertaken earlier in this opinion demonstrates that the state's involvement is extensive and comprehensive. Grants of power to cities and counties are few in number, guarded in language, and invariably qualified in scope. Nevertheless, those grants do exist. Section 66427.5 shows that the state is willing to allow some local participation in some aspects of mobilehome conversion; and section 66427.4 shows that in one setting—when a mobilehome park is converted to a different use—it is virtually expected that the state role will be secondary. The first test for implied preemption cannot be established.

But the three-statute continuum discussed earlier in connection with express preemption also shows that the second and third tests for implied preemption are.

For 25 years, the state has had the policy "to encourage and facilitate the conversion of mobilehome parks to resident ownership." (Health & Saf. Code, § 50780, subd. (b).) The state is even willing to use public dollars to promote this policy. (Health & Saf. Code, § 50782 [establishing the Mobilehome Park Purchase Fund].) The

state clearly has an interest in mobilehome park conversions, but is willing to have local governments occupy some role in the process. The extent of local involvement is calibrated to the situation. However, when the subject is narrowed to conversions that merely affect the change from rental to residential ownership, local involvement is strictly limited. If the proposed conversion has the support of two-thirds or more of the park tenants, section 66428.1 prevents the city or county from interfering except in four very specific situations. If the tenant support is less than two-thirds, section 66427.5 directs that the role of local government "shall be limited to the issue of compliance with this section." (§ 66427.5, subd. (e).)

In sum, the fact that the situations where localities could involve themselves in conversions have been so carefully delineated shows that the Legislature viewed the subject as one where the state concern would not be advanced if parochial interests were allowed to intrude. Accordingly, we conclude that the second and third tests for implied preemption are present.

There is more. "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates . . . general law . . . ." (*Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807-808; accord, *Big Creek*, *supra*, 38 Cal.4th 1139, 1150; *Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th 725, 747.) The Ordinance is plainly duplicative of section 66427.5 in several respects, as the County candidly admits: the Ordinance "sets forth minimum . . . requirements" for the conversion application, "including: (a) submission of a survey of resident support *in compliance with section 66427.5*; (b) submission of a report on the impact of the proposed conversion on park residents *as required by section 66427.5*; and (c) submission of a copy of the annual maintenance inspection report *already required by Title 25 of the California Code of Regulations*." (Italics added.) The Ordinance also purports to require the subdivider to provide residents of the park "written notice of [the] right to continue residency as a tenant in the park as required by Government Code § 66427.5(a)" and "a copy of the impact report required by Government Code § 66427.5(b)." (Sonoma County Code, § 25-39.7(d), subs. 1, 3.)

And still more. A local ordinance is impliedly preempted if it mandates what state law forbids. (*Big Creek, supra*, 38 Cal.4th 1139, 1161; *Great Western Shows, Inc. v. County of Los Angeles, supra*, 27 Cal.4th 853, 866.) As already established, section 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application. Yet the Ordinance directs that the application shall be approved "only if the decision maker finds that," in addition to satisfying the survey and tenant impact report requirements imposed by section 66247.5, the application (1) "is consistent with the General Plan" and other local land and zoning use regulations; (2) demonstrates that "appropriate" financial provision has been made to underwrite and "ensure proper long-term management and maintenance of all common facilities and infrastructure"; (3) the applicant shows that there are "no conditions existing in the mobile home park that are detrimental to public health or safety"; and (4) the proposed conversion "is a bona fide resident conversion" as measured against the percentage-based presumptions established by the Ordinance.[14] (Sonoma County Code, § 25.39-7(c), subs. 1(c)-1(f), 2.) The Ordinance also requires that, following approval of the conversion application, the subdivider "shall give each resident household written notice of its exclusive right to contract for the purchase of the dwelling unit or space it occupies at the same or more favorable terms and conditions than those on which such unit or space shall be initially offered to the general public," for a period of 90 days "from the issuance of the subdivision public report . . . pursuant to California Business and Professions Code § 11018.2." (*Id.*, § 25-39.7(d), subd. 2.)

However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. The matter of just what constitutes a "bona fide conversion" according to the Ordinance appears to authorize—if not actually invite—a purely subjective inquiry, one which is not

[14] Although it is not discussed in the briefs, a recent decision by Division Three of this district suggests these provisions might also be vulnerable to the claim that they amount to a burden of proof presumption that would be preempted by Evidence Code section 500. (See *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 751, fn. 5, 754-758.)

truly reduced by reference to the Ordinance's presumptions.[15] And although the Ordinance employs the mandatory "shall," it does not establish whether the presumptions are conclusive or merely rebuttable. This uncertainty is only compounded when other criteria are scrutinized. What is the financial provision that will be deemed "appropriate" to "ensure proper long-term management and maintenance"? Such imprecision stands in stark contrast with the clear directives in section 66427.5.

The County, ably supported by an impressive array of amici, stoutly defends its corner with a number of arguments as to why the Ordinance should be allowed to operate. The County lays particular emphasis on the need for ensuring that the conversion must comport with the General Plan, especially its housing element, because that is where the economic dislocation will be manifest, by reducing the inventory of low-cost housing. (See Health & Saf. Code, § 50780, subds. (a)(1) & (a)(3).) In this sense, however, section 66427.5 has a broader reach than the County perhaps appreciates, as it does make provision in subdivision (f) for helping non-purchasing lower income households to remain. In any event, we cannot read section 66427.5 as granting localities the same powers expressly enumerated in section 66427.4 that are so conspicuously absent from the plain language of section 66427.5.

We assume the County was motivated by the laudable purposes stated in the first section of the Ordinance. And we have acknowledged that the County's construction of the section 66427.5 can find some plausibility from the statutory language. Nevertheless, and after a most careful consideration of the arguments presented, we have concluded that the Ordinance crosses the line established by the Legislature as marking territory reserved for the state. As we recently stated in a different statutory context: "There are

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[15] That uncertainty may be illustrated by how Sequoia perceives one part of the Ordinance. With respect to instances where tenant support for conversion is between 20 percent and 50 percent, the Ordinance provides: "In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success . . . is in place to convey the majority of the lots to current residents of the park within a reasonable period of time." (Sonoma County Code, § 25-39.7(c)(2)(b).) Sequoia treats this as a requirement that the subdivider come forth with "financial assistance" to assist tenants to purchase their units.

weighty arguments and worthy goals arrayed on each side. . . . [and] . . . issues of high public policy. To choose between them, or to strike a balance between them, is the essential function of the Legislature, not a court." (*State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 324.) Of course, if the Legislature disagrees with our conclusion, or if it wishes to grant cities and counties a greater measure of power, it can amend the language of section 66427.5.

DISPOSITION

The order is reversed, and the cause is remanded to the trial court with directions to enter a new order or judgment consistent with this opinion. Sequoia shall recover its costs.

Richman J.

We concur:

Haerle, Acting P.J.

Lambden, J.

A120049, *Sequoia Park Associates v. County of Sonoma*

Trial Court:	Superior Court of Sonoma County
Trial Judge:	Temporary Judge Raymond J. Giordano (Pursuant to Cal. Const., art. VI, § 21.)
Attorney for Plaintiff and Appellant:	Bien & Summers, Elliot L. Bien and Catherine Meulemans
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August 27, 2009

Our File Number: 36014.112/4814-1346-0996v.1

VIA HAND DELIVERY AND E-MAIL

Planning Commission
Subdivision Committee
City of Huntington Beach ("City")
2000 Main Street
Post Office Box 190
Huntington Beach, CA 92648
Attn: Scott Hess, Director of Planning

RE: Huntington Shorecliffs Mobile Home Park ("Park")
Application for Tentative Tract Map No. 17296 ("Application")
Appeal of Project Implementation Code Requirements, Conditions and Staff Recommendation

Dear Planning Commissioners:

This letter constitutes and sets forth the basis for the appeal by the Park owners[1] of the August 25, 2009 purported "Planning Director decision" applying project implementation code requirements for the Park subdivision.[2] A copy of the purported "Planning Director decision" is enclosed herewith.

The purported "Planning Director decision" to impose unlawful code requirements is a blatant improper attempt by the City Planning Department to impose an obstacle for what should be a simple checklist approval of the Application under the exclusive preemptive requirements of Government Code Section 66427.5. Therefore, while an appeal should not be necessary, the Park owners are filing the appeal out of an abundance of caution, given the statements in the August 25, 2009 letter contending that an appeal is required. By filing this appeal, the Park owners do not waive their rights to contend that an appeal regarding imposition of unlawful code conditions is unnecessary.

This letter also constitutes the Park owners' objections to the Planning and Public Works Department proposed conditions of approval contained in an August 20, 2009 letter from the Planning Department.

[1] Shorecliff LP, JS Stadium, LLC, Huntington BSC Park, LP, Shorecliff Main, LP

[2] Attached to this letter is a $494 check, which City Municipal Code Section 248.24A expressly states is not required, but which the Planning Director decision wrongfully states is required. The Park owners request that the check be voided and returned to them.

ATTACHMENT NO. 10 1

Finally, this letter objects to the Planning Department's yet unpublished decision to recommend denial of the Application based on the Planning Department's unlawful imposition of its own conditions for the substantive content of the Park Owner conversion impact report.

We respectfully request that the Planning Commission consider this appeal and these objections in connection with and at the same meeting in which the Commission considers approval of the Application so that the unlawful City Staff decisions do not delay what the law requires to be a streamlined, almost ministerial, process for approval of the Application.

Express State Preemption of Local Agency Requirements and Conditions

The appeal and objections are based on the recent Court of Appeal decision in *Sequoia Park Associates v. County of Sonoma* 2009 Cal. App. LEXIS 1397 (Cal. App. 1st Dist. Aug. 21, 2009), a copy of which is enclosed herewith. In *Sequoia Park Associates*, the California Court of Appeal held that State law pertaining to mobilehome parks, particularly the Subdivision Map Act (Govt. Code § 66427.5 (e)), preempts application of local agency planning, zoning, subdivision and other municipal code requirements or conditions with respect to subdivision of existing rental mobilehome parks for conversion to resident ownership.

The sole requirements for approval of the Application are those contained in Government Code Section 66427.5, which simply require submission of the map, a tenant survey and a conversion impact report. Government Code Section 66427.5 (e) provides:

> The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

In *Sequoia Park Associates*, the California Court of Appeal held that County of Sonoma planning, zoning and subdivision code requirements were expressly and impliedly preempted by Government Code Section 66427.5 (e), given the comprehensive State scheme of mobilehome statutes and regulations:

> We therefore conclude that what is currently subdivision (e) of section 66427.5 continues to have the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis.

ATTACHMENT NO. 10-2

> (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at p. 54)

The County of Sonoma ordinance included requirements for existing mobilehome park subdivision applications that went beyond the express requirements of Government Code Section 66427.5:

> As already established, section 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application. Yet the Ordinance directs that the application shall be approved "only if the decision maker finds that," in addition to satisfying the survey and tenant impact report requirements imposed the section 66427.5, the application (1) "is consistent with the General Plan" and other local land and zoning use regulations, (2) demonstrates that "appropriate" financial provision has been made to underwrite and "ensure proper long-term management and maintenance of all common facilities and infrastructure"; (3) the applicant shows that there are "no conditions existing in the mobile home park that are detrimental to publish health or safety"; and (4) the proposed conversion "is a bona fide resident conversion" as measured against the percentage-based presumptions established by the Ordinance. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 58-59)

The County of Sonoma code requirements included requirements for engineering reports on park common facilities and infrastructure, estimates of the useful life of such common facilities and infrastructure, an estimate of the annual overhead and operating costs of maintaining the park, its common areas and landscaping, an estimate of necessary replacement costs, and a verification of compliance with HCD requirements under Title 25 of the California Code of Regulations. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 38-41)

Similarly, in this situation, the City code requirements and proposed conditions impose general plan, and other local land and zoning use regulations, requirements for design, financing and construction and long-term maintenance of common facilities and infrastructure, and health and safety and HCD compliance requirements in connection with approval of the Application.

ATTACHMENT NO. 10 3

State Mobilehome Law is Comprehensive and Preclusive

As the Court of Appeal concluded in *Sequoia Park Associates*, local agencies cannot by their ordinances or conditions add to or even duplicate the provisions of Government Code Section 66427.5 in considering applications to subdivide existing mobilehome parks for conversion to resident ownership:

> However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at p. 60)

> As will be shown, we conclude that the ordinance is expressly preempted because section 66427.5 states that the "scope of the hearing" for approval of the conversion application" shall be limited to the issue of compliance with this section." We further conclude that the ordinance is impliedly preempted because the Legislature, which has established a dominant role for the state in regulating mobilehomes, has indicated its intent to forestall local intrusion into the particular terrain of mobilehome conversions, declining to expand section 66427.5 in ways that would authorize local government to impose additional conditions or requirements for conversion approval. Moreover, the County's ordinance duplicates several features of state law, a redundancy that is an established litmus test for preemption. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at pp. 2-3)

The decision in *Sequoia Park Associates* was based on a thorough review by the Court of Appeal of the comprehensive State statutory scheme regarding mobilehome parks:

> Section 66427.5 does not stand alone. If the Legislature ever did leave the field of mobilehome park legislation to local control, that day is long past. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at p. 12)

> These statutory schemes indicate that the state is clearly the dominant actor on this stage. Under the Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with the authority to formulate "specific requirements

ATTACHMENT NO. 10.4

> relating to construction, maintenance, occupancy, use and design" of mobilehome parks (Health & Saf. Code 18253 .... (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 16-17)
>
> Additional provisions respecting mobilehome parks are in the Government Code. Cities and counties cannot decide that a mobilehome park is not a permitted use "on all land planned and zoned for residential land use as designated by the applicable local plan," though the locality "may require a use permit." (Govt. Code, § 65852.7) "I[I]t is clear that the Legislature intended to limit local authority for zoning regulation to the specifically enumerated exceptions [in Heath and Safety Code section 18300, subdivision (g), quoted at fn. 3, *ante*] of where a mobilehome park may be located, vehicle parking, and lot lines, not the structures within the parks." (*County of Santa Cruz v. Waterhouse*, *supra*, 127 Cal.App.4th 1483, 1493) (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 19-20)

The Court of Appeal, while recognizing that local agencies traditionally have broad powers to regulate land uses in their jurisdiction, concluded in *Sequoia Park Associates* that the State has taken away those powers with respect to subdivision of existing rental mobilehome parks for the purpose of conversion to resident ownership:

> It is a given that regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government. ...
>
> However, this attitude does not long survive. The survey of state legislation already undertaken demonstrates that the state has taken for itself the commanding voice in mobilehome regulation. Localities are allowed little scope to improvise or deviate from the Legislature's script. The state's dominance was in place before the subject of mobilehome park conversion was introduced into the Subdivision Map Act in 1991. (See Stats. 1991, ch. 745, §§ 1-2, 4, adding §§ 66427.5, 66428.1, & amending § 66427.4 to cover mobilehome park conversions.) This was seven years after the State had declared itself in favor of converting mobilehome parks to resident ownership, and at the same time established the Mobilehome Park Purchase Fund from

ATTACHMENT NO. 5

which the HCD could make loans to low-income residents and resident organizations to facilitate conversions. (Stats. 1984, ch. 1692, § 2, adding Health & Saf. Code, §§ 50780-50786.) (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 43-44)

It must be recalled that the predicate of the statutory examination is a functioning park with existing tenants with all necessary permits and inspections needed for current operation. As Sequoia points out: "Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general plans, and subjected to applicable health and safety regulations." Moreover, the park has been inspected and relicensed on an annual basis. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 48-49)

For 25 years, the state has had the policy "to encourage and facilitate the conversion of mobilehome parks to resident ownership." (Health & Saf. Code, § 50780, subd. (b).) The state is even willing to use public dollars to promote this policy (Health & Saf. Code, § 50782 [establishing the Mobilehome Park Purchase Fund].) The state clearly has an interest in mobilehome park conversions, but is willing to have local governments occupy some role in the process. The extent of local involvement is calibrated to the situation. However, when the subject is narrowed to conversions that merely affect the change from rental to residential ownership, local involvement is strictly limited. If the proposed conversion has the support of two-thirds or more of the park tenants, section 66428.1 prevents the city or county from interfering except in four very specific situations. If the tenant support is less than two-thirds, section 66427.5 directs that the role of local government "shall be limited to the issue of compliance with this section." (§ 66427.5, subd. (e).) (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 56-57)

Local Ordinances Cannot Duplicate or Condition State Requirements

In reaching its decision, the Court of Appeal in *Sequoia Park Associates* made clear that local agencies cannot even condition tentative tract map approval on the local agencies' own interpretation of how the requirements of Government Code Section 66427.5 should be satisfied.

Part of the County of Sonoma ordinance that was struck down involved the County's conditions for accepting the tenant survey required by Government Code Section 66427.5 (d). With respect to those local agency tenant survey conditions, the Court of Appeal in Sequoia Park Associates concluded:

> However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. The matter of just what constitutes a "bona fide conversion" according to the Ordinance appears to authorize—if not actually invite—a purely subjective inquiry, one which is not truly reduced by reference to the Ordinance's presumptions. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at p. 60)

The Court of Appeal in Sequoia Park Associates also considered, and rejected, an argument that local agencies should be able to impose conditions for acceptance of the conversion impact report required by Government Code Section 66427.5 (b):

> We admit that there is no little attraction to the County's approach. Beginning with the presumption against preemption in the area of land use, it is more than a little difficult to see the Legislature as accepting that approval of a conversion plan is dependent only on the issues of resident support and the subdivider's efforts at avoiding economic displacement of nonpurchasing residents. Section 66427.5 does employ language that seems to accept, if not invite, supplementary local action. For example, a subdivider is required to "file a report on the impact of the conversion upon residents," but the Legislature made no effort to spell out the contents of such a report. And there is some force to the rhetorical inquiry posed by amici: "Surely, the Legislature intended that the report have some substantive content .... [¶] ... [¶] If there can be no assurance as to the contents of the [report], it may become a meaningless exercise."

> However, a careful examination of the relevant statutes extracts much of the appeal in the County's approach. ...
>
> * * * * *
>
> It is not surprising that in this middle situation that the Legislature would see fit to grant local authorities *some* power, but circumscribe the extent of that power. That is what section 66427.5 does. It says in effect: Local authority, you have this power, but no more. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 46-48, 51)

Conversion Impact Reports are Necessarily Limited in Scope

The content of conversion impact reports is necessarily limited given the preliminary City subdivision approval stage of the conversion when the reports must be submitted. The City's action on the subdivision application occurs at a stage in the conversion process where significant information pertaining to conversion such as lot purchase price and a study of common area facilities and infrastructure and future homeowner association obligations has not yet occurred under the Subdivided Lands Act, Business and Professions Code Sections 11000 *et seq.*

> Although a tenant cannot make a rational decision to buy, continue to rent, or move his or her mobilehome unless the tenant is given an option price and a proposed rental price, the tenant is not required to make such a decision until after the Department of Real Estate has approved the project and issued its public report. (Bus. & Prof Code § 11010.9) (*El Dorado Palm Springs, Ltd. v. City of Palm Springs*, *supra*, 96 Cal.App.4th at 1179)
>
> While the filing of the application and compliance with Section 66427.5 give notice to the residents of their option to purchase, the subdivider does not need to disclose a tentative price at that time because the residents do not need to decide whether to purchase at that time. (*El Dorado Palm Springs, Ltd. v. City of Palm Springs*, *supra*, 96 Cal.App.4th at 1180)

In fact, the Subdivided Lands Act prevents premature disclosure of lot price information:

> Indeed, the giving of the disclosure notice does not authorize the subdivider to offer to sell the units before obtaining Department of Real Estate approval. (Bus. & Prof. Code § 11010.9, subd. (c).) (*El Dorado Palm Springs, Ltd. v. City of Palm Springs*, *supra*, 96 Cal.App.4th at 1180)

Thus, all that is required to be discussed in the conversion impact report at the stage of City approval of the Application is notice to the residents of their statutory option to purchase or continue leasing and of the statutory protections for those residents pertaining to post-conversion rent increases.

> At the latter time [the subdivision approval by the City], the subdivider must only notify residents that they will have an option to purchase their sites or to continue to rent them. (*El Dorado Palm Springs, Ltd. v. City of Palm Springs*, *supra*, 96 Cal.App.4th at 1180)

Conclusion

In conclusion, the Park owners by way of this appeal reject and object to all of the proposed conditions set forth in the August 20, 2009 letter from the Planning Department and object to and appeal (as may be necessary) the Planning Director decision to impose all of the municipal code requirements set forth in the August 25, 2009 letter.

The Park owners will only agree to accept the non preempted Planning Department code requirements 1 (b), 2 (a), 4, 5, and 8 and Public Works Department pre-final map recordation code requirements 1-6, as set forth in the August 25, 2009 letter. The Park owners appeal the imposition of all other municipal code requirements, as set forth in the August 25, 2009 letter.

The Park owners also reject and object to the Planning Department intended recommendation to deny the Application, which recommendation is based on the Planning Department's unlawful attempt to apply its own conditions for the substantive contents of the conversion impact report.

The City cannot impose any conditions of its own on approval of the Application. The City has an almost ministerial duty to approve the Application if the Application complies with the simple checklist of requirements set forth in Government Code Section 66427.5.

The Park owners look forward to moving ahead expeditiously with conversion of the Park.

Best Regards,

HART, KING & COLDREN

Boyd L. Hill

BLH/dr

Enclosure: Check No. 8010 for $494
August 20, 2009 Conditions Letter
August 25, 2009 Code Requirements Letter
Sequoia Park Associates v. County of Sonoma case

cc: Jennifer McGrath, City Attorney (by e-mail only)
Leonie Mulvihill, Assistant City Attorney (by e-mail only)
Herb Fauland, Planning Manager (by e-mail only)
Steve Bogart, Public Works (by e-mail only)
Rami Talleh, Senior Planner (by e-mail only)

bcc John Saunders (by e-mail only)
Michael Cirillo (by e-mail only)
Burt Mazelow (by e-mail only)

ATTACHMENT NO. 10-11

City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

DEPARTMENT OF PLANNING

August 25, 2009

Boyd Hill
Hart, King &Coldren
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

SUBJECT: TENTATIVE TRACT MAP NO. 17269 (HUNTINGTON SHORECLIFFS SUBDIVISION)
PROJECT IMPLEMENTATION CODE REQUIREMENTS

Dear Mr. Hill,

In order to assist you with your development proposal, staff has reviewed the project and identified applicable city policies, standard plans, and development and use requirements, excerpted from the City of Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes. This list is intended to help you through the permitting process and various stages of project implementation should the Planning Commission approve your project.

It should be noted that this requirement list is in addition to any "conditions of approval" adopted by the Planning Commission if the project is approved. Please note that if the design of your project or site conditions change, the list may also change.

The Planning Director has interpreted the relevant Sections of the Zoning and Subdivision Ordinance to require that your project satisfy the following development standards. Should you disagree, pursuant to Section 248.24A, you have ten (10) days from the date of this notice to file an appeal with the Planning Department. The appeal fee is $494.00.

If you would like a clarification of any of these requirements, an explanation of the Huntington Beach Zoning & Subdivision Ordinance and Municipal Codes, or believe some of the items listed do not apply to your project, and/or you would like to discuss them in further detail, please contact me at 714-374-1682 or at rtalleh@surfcity-hb.org and/or the respective source department (contact person below).

Sincerely,

Rami Talleh,
Senior Planner

Enclosure

cc: Leonie Mulvihill, Senior Deputy City Attorney
Gerald Caraig, Building and Safety Department – 714-374-1575
Darin Maresh, Fire Department – 714-536-5531
Steve Bogart, Public Works – 714-536-1692
Herb Fauland, Planning Manager
Jason Kelley, Planning Department
Shorecliff, LP, 200 Sandpoints, fourth floor, Santa Ana, CA 92707
Project File

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CITY OF HUNTINGTON BEACH
PLANNING DEPARTMENT

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE:	**August 24, 2009**
PROJECT NAME:	HUNTINGTON SHORECLIFFS MOBILEHOME SUBDIVISION
ENTITLEMENTS:	PLANNING APPLICATION NO. 08-0190; TENTATIVE TRACT MAP NO. 17296
PROJECT LOCATION:	20701 BEACH BLVD., 92648 (WEST SIDE OF BEACH BLVD., SOUTH OF INDIANAPOLIS AVE.)
PROJECT PLANNER:	RAMI TALLEH, SENIOR PLANNER
TELEPHONE/E-MAIL:	(714) 374-1682/ rtalleh@surfcity-hb.org
PROJECT DESCRIPTION:	**TO CONVERT THE HUNTINGTON SHORECLIFFS MOBILE HOME PARK FROM RENTAL UNITS TO INDIVIDUAL OWNERSHIP.**

The following is a list of code requirements deemed applicable to the proposed project based on plans received and dated August 4, 2009. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer.

1. Prior to submittal of the final tract map to the Public Works Department for processing and approval, the following shall be required:

   a. At least 90 days before City Council action on the final map, CC&Rs shall be submitted to the Planning Department and approved by the City Attorney. The CC&Rs shall identify the common driveway access easements, and maintenance of all walls and common landscape areas by the Homeowners' Association. The CC&Rs must be in recordable form prior to recordation of the map.

   b. Final tract map review fees shall be paid, pursuant to the fee schedule adopted by resolution of the City Council (*City of Huntington Beach Planning Department Fee Schedule*). (HBZSO Section 254.16)

   c. Park Land In-Lieu Fees shall be paid pursuant to the requirements of HBZSO Section 254.08 – *Parkland Dedications.* The fees shall be paid and calculated according to a schedule adopted by City Council resolution (*City of Huntington Beach Planning Department Fee Schedule*).

2. Prior to conversion of the mobile home park, the following shall be completed:

   a. The final map shall be recorded with the County of Orange.

   b. All improvements shall be completed in accordance with approved plans.

ATTACHMENT NO. 10.13

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3. The Departments of Planning, Public Works and Fire shall be responsible for ensuring compliance with all conditions of approval herein as noted after each condition. The Planning Director and Public Works Director shall be notified in writing if any changes to parcel map are proposed during the plan check process. Permits shall not be issued until the Planning Director and Public Works Director have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the HBZSO.

4. Tentative Tract Map No. 17296 shall not become effective until the ten calendar day appeal period has elapsed Planning Commission approval.

5. Tentative Tract Map No. 17296 shall become null and void unless exercised within two (2) years of the date of final approval. An extension of time may be granted by the Director of Planning pursuant to a written request submitted to the Planning Department a minimum 60 days prior to the expiration date.

6. The subdivision shall comply with all applicable requirements of the Municipal Code, Building & Safety Department and Fire Department, as well as all applicable local, State and Federal Codes, Ordinances and standards, except as noted herein.

7. Construction shall be limited to Monday – Saturday 7:00 AM to 8:00 PM. Construction shall be prohibited Sundays and Federal holidays.

8. The applicant shall submit a check in the amount of $50 for the posting of a Notice of Exemption at the County of Orange Clerk's Office. The check shall be made out to the County of Orange and submitted to the Planning Department within two (2) days of the Planning Commission's action.

9. All landscaping shall be maintained in a neat and clean manner, and in conformance with the HBZSO. Prior to removing or replacing any landscaped areas, check with the Departments of Planning and Public Works for Code requirements. Substantial changes may require approval by the Planning Commission.

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HUNTINGTON BEACH
PUBLIC WORKS DEPARTMENT

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE:	**AUGUST 20, 2009**
PROJECT NAME:	**HUNTINGTON SHORECLIFFS MOBILE HOME PARK**
ENTITLEMENTS:	**TENTATIVE TRACT MAP 17296**
PLNG APPLICATION NO.	**2008-0190**
DATE OF PLANS:	**AUGUST 4, 2009**
PROJECT LOCATION:	**20701 BEACH BLVD**
PROJECT PLANNER	**RAMI TALLEH, SENIOR PLANNER**
TELEPHONE/E-MAIL:	**714-374-1682 / RTALLEH@SURFCITY-HB.ORG**
PLAN REVIEWER:	**STEVE BOGART, SENIOR CIVIL ENGINEER**
TELEPHONE/E-MAIL:	**714-374-1692 / SBOGART@SURFCITY-HB.ORG**
PROJECT DESCRIPTION:	**TO CONVERT THE HUNTINGTON SHORECLIFFS MOBILE HOME PARK FROM RENTAL UNITS TO INDIVIDUAL OWNERSHIP.**

The following is a list of code requirements deemed applicable to the proposed project based on plans as stated above. The items below are to meet the City of Huntington Beach's Municipal Code (HBMC), Zoning and Subdivision Ordinance (ZSO), Department of Public Works Standard Plans (Civil, Water and Landscaping) and the American Public Works Association (APWA) Standards Specifications for Public Works Construction (Green Book), the Orange County Drainage Area management Plan (DAMP), and the City Arboricultural and Landscape Standards and Specifications. The list is intended to assist the applicant by identifying requirements which shall be satisfied during the various stages of project permitting, implementation and construction. If you have any questions regarding these requirements, please contact the Plan Reviewer or Project Planner.

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO SUBMITTAL OF THE FINAL TRACT MAP TO THE CITY FOR REVIEW:

1. A Hydrology and Hydraulic Analysis for existing site drainage and tributary upstream drainage shall be submitted for Public Works review and approval (10, 25, and 100-year storms and back-to-back storms shall be analyzed). In addition, this study shall include 24-hour peak back-to-back 100-year storms for onsite detention analysis. Any drainage improvements required by the aforementioned analysis shall be designed and constructed as required by the Department of Public Works to mitigate impact of increased runoff due to development or deficient downstream systems. Design of all necessary drainage improvements shall provide mitigation for all rainfall event frequencies up to a 100-year frequency. (ZSO 255.12)

   Based on the Fire Department's requirement for a separate dedicated private on-site fire hydrant system, a hydraulic water analysis is required to identify any off-site water improvements necessary

to adequately protect the property per the Fire Department requirements. The subdivider shall be required to upgrade/improve the City's water system per Water Standards to meet the water demands to the site and/or otherwise mitigate the impacts of the property at no cost to the City. The subdivider shall provide the City with a site plan showing the existing and proposed on-site and off-site water improvements (including pipeline sizes, fire hydrants, meters, and backflow device locations). The subdivider shall be responsible to pay the City for performing the analysis using the City's hydraulic water model. (SMA 66428.1(d) and ZSO 255.04(E))

THE FOLLOWING DEVELOPMENT REQUIREMENTS SHALL BE COMPLETED PRIOR TO RECORDATION OF THE FINAL TRACT MAP:

1. The Tentative Tract Map received and dated August 4, 2009 shall be the approved layout.
2. The Final Tract Map shall be submitted to the City of Huntington Beach Public Works Department for review and approval and shall include a title report to indicate the fee title owner(s) as shown on a title report for the subject properties. The title report shall not be more than six (6) weeks old at the time of submittal of the Final Parcel Map.
3. The Final Tract Map shall be consistent with the approved Tentative Tract Map. (ZSO 253.14)
4. A reproducible Mylar copy and a print of the recorded final tract map shall be submitted to the Department of Public Works at the time of recordation.
5. The engineer or surveyor preparing the final map shall comply with Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18 for the following item:
    a. Tie the boundary of the map into the Horizontal Control System established by the County Surveyor.
    b. Provide a digital-graphics file of said map to the County of Orange.
6. Provide a digital-graphics file of said map to the City per the following design criteria:
    c. Design Specification:
        i. Digital data shall be full size (1:1) and in compliance with the California coordinate system – STATEPLANE Zone 6 (Lambert Conformal Conic projection), NAD 83 datum in accordance with the County of Orange Ordinance 3809.
        ii. Digital data shall have double precision accuracy (up to fifteen significant digits).
        iii. Digital data shall have units in US FEET.
        iv. A separate drawing file shall be submitted for each individual sheet.
        v. Digital data shall be in compliance with the Huntington Beach Standard Sheets, drawing names, pen color and layering conventions.
        vi. Feature compilation shall include, but shall not be limited to: Assessor's Parcel Numbers (APN), street addresses and street names with suffix.
    d. File Format and Media Specification:
        i. Shall be in compliance with one of the following file formats (AutoCAD DWG format preferred):
            - AutoCAD (version 2000, release 4) drawing file: ___.DWG
            - Drawing Interchange file: _____.DXF

ii. Shall be in compliance with the following media type:

- CD Recordable (CD-R) 650 Megabytes

7. The improvement plans shall be submitted to the Department of Public Works for review and approval. The engineer shall submit cost estimates for determining bond amounts. (ZSO 255.16C & MC 17.05)

8. All improvement securities (Faithful Performance, Labor & Material and Monument Bonds) and Subdivision Agreement shall be posted with the Public Works Department and approved as to form by the City Attorney. (ZSO 255.16)

9. A Certificate of Insurance shall be filed with the Public Works Department and approved as to form by the City Attorney. (ZSO 253.12K)

10. If the Final Tract map is recorded before the required improvements are completed, a Subdivision Agreement may be submitted for construction in accordance with the provisions of the Subdivision Map Act. (SMA)

11. All applicable Public Works fees shall be paid. Fees shall be calculated based on the currently approved rate at the time of payment unless otherwise stated. (ZSO 250.16)

12. A Homeowners' Association(s) (HOA) shall be formed and described in the CC&R's to manage the following for the total project area:

e. Onsite landscaping and irrigation improvements

f. On-site sewer and drainage systems

g. Best Management Practices (BMP's) as per the approved Water Quality Management Plan (WQMP)

The aforementioned items shall be addressed in the development's CC&R's.

13. Improvement Plans, prepared by a Licensed Civil Engineer, shall be submitted to the Public Works Department for review and approval. (MC 17.05/ZSO 230.84) The plans shall comply with Public Works plan preparation guidelines and include the following improvements on the plan:

h. Existing AC curb along the Beach Boulevard frontage shall be removed and replaced with curb and gutter per Public Works Standard Plan No. 202 and per Caltrans requirements. (ZSO 255.04 and SMA 66428.1(d))

i. Six (6) foot wide sidewalk and a nine (9) foot wide curb adjacent landscaped parkway along the Beach Boulevard frontage shall be constructed per Public Works Standard Plan No. 207. (ZSO 255.04 and SMA 66428.1(d))

j. The existing earthen storm drain channel along the Beach Boulevard frontage shall be replaced with a 54-inch storm drain pipeline (unless otherwise designed and sized by Hydraulics Report which is submitted to Public Works for review and approval) to convey the 100-year storm flow as quantified in the City's 2005 Master Plan of Drainage. (ZSO 255.04 and SMA 66428.1(d))

k. Street lights shall be installed along the Beach Boulevard project frontage. Lighting standards shall be per City of Huntington Beach guidelines. (ZSO 255.04)

l. ADA compliant access ramps shall be installed on the easterly curb returns on Delaware Street at Mermaid Lane per Caltrans Standard Plan A88A. (ZSO 255.04, ADA and SMA 66428.1(d))

m. An ADA compliant access ramp shall be installed on the southeast corner of Delaware Street and Frankfort Avenue per Caltrans Standard Plan A88A. (ZSO 255.04, ADA and SMA 66428.1(d))

n. An ADA compliant access ramp shall be installed on the southeast corner of Delaware Street and Frankfort Avenue per Caltrans Standard Plan A88A. (ZSO 255.04, ADA and SMA 66428.1(d))

o. ADA compliant access ramps shall be installed on the south curb returns of Frankfort Avenue at Shorecliff Drive (at the subject site's northerly entrance) per Caltrans Standard Plan A88A. (ZSO 255.04, ADA and SMA 66428.1(d))

p. An ADA compliant access ramp shall be installed on Frankfort Avenue where it intersects Hill Street per Caltrans Standard Plan A88A. (ZSO 255.04, ADA and SMA 66428.1(d))

q. Damaged curb and gutter along the Frankfort Avenue frontage (at Hill Street) shall be removed and replaced per Public Works Standard Plan No. 202. (ZSO 255.04 and SMA 66428.1(d))

r. Based on the Fire Department's requirement for a separate dedicated private on-site fire hydrant system, the subdivider shall comply with the following requirements:

    i. The existing two (2) 4-inch compound manifold metering system serving the fire, domestic and irrigation water systems shall be replaced with a single meter for domestic and irrigation purposes only. The new meter must be sized to meet the minimum requirements of the California Plumbing Code (CPC) and constructed per Water Standards. (SMA 66411.5(a) and ZSO 255.04(E))

    ii. Backflow protection devices shall be constructed per Water Standards at each fire service connection to the to the City's water system. (SMA 66411.5(a) and ZSO 255.04(E))

s. The existing 8-inch backflow device configuration is non-conforming placing the City's water supply at risk of potential contamination. As a result of health and safety concerns, the subdivider shall reconstruct or replace the existing backflow device to comply with current Water Standards. (Resolution 5921, Title 17 State Regulation, SMA 66411.5(a), and SMA 66428.1(d))

t. An onsite storm drain shall be designed per the final approved hydrology and hydraulics study, City Standards and per the City adopted 2005 Master Plan of Drainage. The storm drain system located within private streets shall be private and maintained by the Homeowner's Association. A soils report, prepared by a Licensed Engineer shall be submitted for reference only. (ZSO 255.04A)

14. A Landscape and Irrigation Plan, prepared by a Licensed Landscape Architect shall be submitted to the Public Works Department for review and approval by the Public Works and Planning Departments. (ZSO 232.04)

    u. Existing mature trees that are to be removed must be replaced at a 2 for 1 ratio with a 36" box tree or palm equivalent (13'-14' of trunk height for Queen Palms and 8'-9' of brown trunk).

    v. "Smart irrigation controllers" and/or other innovative means to reduce the quantity of runoff shall be installed. (ZSO 232.04D)

    w. Standard landscape code requirements apply. (ZSO 232)

15. All landscape planting, irrigation and maintenance shall comply with the City Arboricultural and Landscape Standards and Specifications. (ZSO 232.04B)

16. Landscaping plans should utilize native, drought-tolerant landscape materials where appropriate and feasible. (DAMP)

17. A Consulting Arborist (approved by the City Landscape Architect) shall review the final landscape tree-planting plan and approve in writing the selection and locations proposed for new trees and the protection measures and locations of existing trees to remain. Said Arborist signature shall be incorporated onto the Landscape Architect's plans and shall include the Arborist's name, certificate number and the Arborist's wet signature on the final plan. (Resolution 4545)

18. A Drainage Fee for the subject development shall be paid at the rate applicable at the time of Building Permit issuance. The current rate of $13,270 per gross acre is subject to periodic adjustments. This project consists of 41.223 gross acres (including its tributary area portions along the half street frontages) for a total required drainage fee of $547,029. City records indicate the current use on the subject property has never paid this required fee. Per provisions of the City Municipal Code, this one time fee shall be paid for all subdivisions or development of land. (MC 14.48) In lieu of the payment of the aforementioned Drainage Fee $547,029, Public Works will accept the construction of the on-site master planned facilities per the City of Huntington Beach, Municipal Code Section 14.38.030.

19. The current tree code requirements shall apply to this site. (ZSO 232)

    a. Existing trees to remain on site shall not be disfigured or mutilated, (ZSO 232.04E) and,

    b. General tree requirements, regarding quantities and sizes. (ZSO 232.08B and C)

20. All landscape irrigation and planting installation shall be certified to be in conformance to the City approved landscape plans by the Landscape Architect of record in written form to the City Landscape Architect. (ZSO 232.04D)

21. Applicant shall provide City with CD media TIFF images (in City format) and CD (AutoCAD only) copy of complete City Approved landscape construction drawings as stamped "Permanent File Copy" prior to starting landscape work. Copies shall be given to the City Landscape Architect for permanent City record.

22. The Water Ordinance #14.52, the "Water Efficient Landscape Requirements" apply for projects with 2500 square feet of landscaping and larger. (MC 14.52) Based upon these requirements, a separate water meter and backflow prevention device shall be provided for landscaping along Beach Blvd.

THE FOLLOWING DEVELOPMENT REQUIREMENTS ARE REQUIRED TO BE COMPLETED PRIOR TO RELEASE OF IMPROVEMENT SECURITIES:

1. Complete all improvements as shown on the approved improvement plans.

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CITY OF HUNTINGTON BEACH
FIRE DEPARTMENT

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE:	August 24, 2009
PROJECT NAME:	HUNTINGTON SHORECLIFF MOBILE HOME SUBDIVISION
ENTITLEMENTS:	PLANNING APPLICATION NO. 08-190: TENTATIVE TRACT MAP NO. 17296
PROJECT LOCATION:	20701 BEACH, HUNTINGTON BEACH, CA
PLANNER:	RAMI TALLEH, ASSOCIATE PLANNER
TELEPHONE/E-MAIL:	(714) 374-1682/ rtalleh@surfcity-hb.org
PLAN REVIEWER-FIRE:	DARIN MARESH, FIRE DEVELOPMENT SPECIALIST
TELEPHONE/E-MAIL:	(714) 536-5531/ dmaresh@surfcity-hb.org
PROJECT DESCRIPTION:	**TO CONVERT THE HUNTINGTON SHORECLIFFS MOBILE HOME PARK FROM RENTAL UNITS TO INDIVIDUAL OWNERSHIP.**

The following is a list of code requirements deemed applicable to the proposed project based on plans received and dated August 4, 2009. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer- Fire: DARIN MARESH, FIRE DEVELOPMENT SPECIALIST.

1. Tract Map No. 17296 for the subdivision of the Huntington Shorecliffs Mobile home park for purposes of converting an existing 304 space for-rent mobile home park for ownership purposes shall comply with the following requirements:
   a. Fire Hydrants and service mains shall meet NFPA 13 and 24, 2002 Edition, Huntington Beach Fire Code Appendix B and C, and City Specification # 407 Fire Hydrant Installation Standards requirements.
   b. Fire flow based on fire area and construction type (HBFC Appendix B, Table B-105.1, Appendix C, Table C-105.1), shall be provided at 1500 gpm from each hydrant spaced every 500 feet.
   c. Private water systems shall be installed to service on-site fire hydrants.
2. Prior to submittal of the final tract map to the Public Works Department for processing and approval, the following shall be complied with:

a. A site plan depicting all locations of fire lanes shall be submitted for review and approval by the Fire Department.

b. Plans portraying the fire hydrants shall reference compliance with NFPA 13 and 24, 2002 Edition, Huntington Beach Fire Code Appendix B and C, and City Specification #407 Fire Hydrant Installation Standards in the plan notes and shall be submitted to the Public Works Department for review and approval by the Public Works and Fire Departments.

c. Plans depicting the private water system shall be submitted for review and approval by the Fire Department.

d. Fire Lanes shall be posted, marked, and maintained per City Specification #415, *Fire Lanes Signage and Markings on Private, Residential, Commercial and Industrial Properties*. The site plan shall clearly identify all red fire lane curbs, both in location and length of run. The location of fire lane signs shall be depicted. No parking shall be allowed in the designated 24 foot wide fire apparatus access road or supplemental fire access per City Specification # 415. For Fire Department approval, reference and demonstrate compliance with City Specification # 401 *Minimum Standards for Fire Apparatus Access* on the plans.

e. A current fire flow test in compliance with the Huntington Beach Fire Code shall be performed by a licensed fire protection contractor with the supervision of the Fire Department. All test results shall be submitted to the Fire Department for Review and Approval.

3. Prior to recordation of the final tract map, the following conditions shall be complied with:

a. Fire Hydrants pursuant to Code Requirement No. 1 referenced above, shall be installed.

b. A fire service main pursuant to Code Requirement No. 1, referenced above, shall be installed in compliance with NFPA 13 and 24, 2002 Editions.

c. Private water system pursuant to Code Requirement No. 1 shall be installed.

d. Residential (SFD) Address Numbers shall be installed to comply with City Specification #428, Premise Identification. Number sets are required on front of the structure in a contrasting color with the background and shall be a minimum of four inches (4") high with one and one half inch (½") brush stroke. For Fire Department approval, reference compliance with City Specification #428, Premise Identification in the plan notes and portray the address location on the building.

e. Individual units shall be identified and numbered per City Specification # 409 Street Naming and Address Assignment Process through the Planning Department. Unit address numbers shall be a minimum of four inches (4") affixed to the units front door in a contrasting color. For Fire Department approval, reference compliance with City Specification #409 Street Naming and Address Assignment Process, in the plan notes and portray the address and unit number of the individual occupancy area.

4. The following conditions shall be maintained during construction:
   a. Fire/Emergency Access and Site Safety shall be maintained during project construction phases in compliance with HBFC Chapter 14, Fire Safety During Construction And Demolition.
   b. Fire/Emergency Access and Site Safety shall be maintained during project construction phases in compliance with City Specification #426, Fire Safety Requirements for Construction Sites.

OTHER:

a. Discovery of additional soil contamination or underground pipelines, etc., must be reported to the Fire Department immediately and the approved work plan modified accordingly in compliance with City Specification #431-92 Soil Clean-Up Standards. **(FD)**

b. Outside City Consultants: The Fire Department review of this project and subsequent plans may require the use of City consultants. The Huntington Beach City Council approved fee schedule allows the Fire Department to recover consultant fees from the applicant, developer or other responsible party. **(FD)**

Fire Department City Specifications may be obtained at:

Huntington Beach Fire Department Administrative Office

City Hall 2000 Main Street, 5th floor

Huntington Beach, CA 92648

or through the City's website at **www.surfcity-hb.org**

If you have any questions, please contact the Fire Prevention Division at (714) 536-5411.

City of Huntington Beach

2000 MAIN STREET CALIFORNIA 92648

DEPARTMENT OF PLANNING

August 20, 2009

Boyd Hill
Hart, King &Coldren
200 Sandpointe, Fourth Floor
Santa Ana, CA 92707

SUBJECT: TENTATIVE TRACT MAP NO. 17269 (HUNTINGTON SHORECLIFF SUBDIVISION)
SUGGESTED CONDITIONS OF APPROVAL

Dear Mr. Hill,

Please find enclosed suggested conditions of approval for the aforementioned project received from the Public Works and Planning Departments for consideration by the Planning Commission. If you would like a clarification of any of these comments or you would like to discuss them in further detail, please contact me at 714-374-1682 and/or the Public Works Department representative – Steve Bogart (714-374-1692).

It should be noted that these suggested conditions of approval, which may be adopted by the Planning Commission if the project is approved, are in addition to applicable "code requirements provided to you under a separate letter.

Sincerely,

Rami Talleh,
Senior Planner

Enclosure

cc: Herb Fauland, Planning Manager
Steve Bogart, Public Works
Shorecliff, LP, 200 Sandpoints, fourth floor, Santa Ana, CA 92707
Project File

DRAFT

CITY OF HUNTINGTON BEACH
PLANNING DEPARTMENT

PROJECT SUGGESTED CONDITIONS OF APPROVAL

DATE:	**June 25, 2009**
PROJECT NAME:	HUNTINGTON SHORECLIFFS MOBILEHOME SUBDIVISION
ENTITLEMENTS:	PLANNING APPLICATION NO. 08-0190; TENTATIVE TRACT MAP NO. 17296
PROJECT LOCATION:	20701 BEACH BLVD., 92648 (WEST SIDE OF BEACH BLVD., SOUTH OF INDIANAPOLIS AVE.)
PROJECT PLANNER:	RAMI TALLEH, SENIOR PLANNER
TELEPHONE/E-MAIL:	(714) 374-1682/ rtalleh@surfcity-hb.org
PROJECT DESCRIPTION:	**TO CONVERT THE HUNTINGTON SHORECLIFFS MOBILE HOME PARK FROM RENTAL UNITS TO INDIVIDUAL OWNERSHIP.**

The following is a list of code requirements deemed applicable to the proposed project based on plans received and dated September 18, 2008. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer.

1. The Tentative Tract Map No. 17296 for Subdivision of an existing mobile home park received and dated September 18, 2008 shall be the approved layout with the following modifications:
   a. The maximum number of lots created by the subdivision shall not exceed the total number mobile home units (304) approved for the site by the California Department of Housing and Community Development.
   b. A landscaped planter between the perimeter fencing and public sidewalk improvements along Beach Boulevard shall be provided.
2. Incorporation of sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (http://www.usgbc.org/DisplayPage.aspx?CategoryID=19) or Build It Green's Green Building Guidelines and Rating Systems (http://www.builditgreen.org/index.cfm?fuseaction=guidelines).
3. Prior to submittal of the final tract map to the Public Works Department for processing and approval, the following shall be required:

ATTACHMENT NO. 10-24

a. The subdivider shall obtain necessary permits from the California Department of Housing and Community Development (HCD) to re-identify the lots if determined necessary.

b. The Subdivider shall demonstrate to HCD compliance with all applicable provisions of Title 25 pertaining to setbacks. If the mobile home park is deficient in compliance with the applicable setbacks, the subdivider shall obtain all necessary applicable alternate approvals from HCD.

4. The subdivider shall offer each existing tenant an option to either purchase his or her subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant. (Subdivision Map Act Section 66427.5)

5. The subdivider shall be required to avoid the economic displacement of all non-purchasing residents in accordance with the following:

   a. As to non-purchasing residents who are not lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may increase from the pre-conversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period. (Subdivision Map Act Section 66427.5)

   b. As to non-purchasing residents who are lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may increase from the pre-conversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period. (Subdivision Map Act Section 66427.5)

DRAFT

HUNTINGTON BEACH
PUBLIC WORKS DEPARTMENT
SUGGESTED CONDITIONS OF APPROVAL

DATE:	**AUGUST 6, 2009**
PROJECT NAME:	**HUNTINGTON SHORECLIFFS MOBILE HOME PARK**
ENTITLEMENTS:	**TENTATIVE TRACT MAP 17296**
PLNG APPLICATION NO.	**2008-0190**
DATE OF PLANS:	**SEPTEMBER 18, 2008**
PROJECT LOCATION:	**20701 BEACH BLVD**
PROJECT PLANNER	**RAMI TALLEH, SENIOR PLANNER**
TELEPHONE/E-MAIL:	**714-374-1682 / RTALLEH@SURFCITY-HB.ORG**
PLAN REVIEWER:	**STEVE BOGART, SENIOR CIVIL ENGINEER** BSM for
TELEPHONE/E-MAIL:	**714-374-1692 / SBOGART@SURFCITY-HB.ORG**
PROJECT DESCRIPTION:	**TO CONVERT THE HUNTINGTON SHORECLIFFS MOBILE HOME PARK FROM RENTAL UNITS TO INDIVIDUAL OWNERSHIP.**

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO SUBMITTAL OF THE FINAL TRACT MAP TO THE CITY FOR REVIEW:

1. A Project Water Quality Management Plan (WQMP) conforming to the current Waste Discharge Requirements Permit for the County of Orange (Order No. R8-2009-0030) prepared by a Licensed Civil Engineer, shall be submitted to the Department of Public Works for review and acceptance. The WQMP shall address all current surface water quality issues.
2. The subdivider shall refer to the California Department of Housing and Community Development (HCD) for domestic and irrigation water metering requirements.

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO RECORDATION OF THE FINAL TRACT MAP:

1. Encroachment permits for work within the Caltrans' right-of-way (for construction of sidewalks, driveways, water connections, etc.) shall be obtained by the applicant or contractor from Caltrans prior to start of work. A copy of each permit, traffic control plans, environmental review and other permission granted by Caltrans shall be transmitted to Public Works.
2. The applicant shall provide an analysis of the existing onsite sanitary sewer system. If any improvements are required per said analysis, they shall be constructed and comply with all associated requirements of HCD.
3. Prior to the recordation of the Map, all required landscape planting and irrigation shall be installed, inspected and approved by the City Landscape Architect/Inspector.

ATTACHMENT NO. 2

*2009 Cal. App. LEXIS 1397, **

SEQUOIA PARK ASSOCIATES, Plaintiff and Appellant, v. COUNTY OF SONOMA, Defendant and Respondent.

A120049

COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

2009 Cal. App. LEXIS 1397

August 21, 2009, Filed

PRIOR HISTORY: [*1]
Superior Court of Sonoma County, No. SCV240003, Raymond J. Giordano, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.).

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff mobilehome park operator appealed an order from the Superior Court of Sonoma County (California), which declined to issue a writ of mandate to prohibit defendant county's enforcement of an ordinance that imposed obligations related to mobilehome park conversion applications that went beyond the obligations required by Gov. Code, § 66427.5.

OVERVIEW: The challenged ordinance, Sonoma County Ord. No. 5725, directed an applicant seeking to convert an existing mobilehome park from a rental to a resident-owner basis to submit various reports required by state law. The ordinance also imposed criteria that had to be satisfied before the application would be presumed bona fide for purposes of approval. The court held that the ordinance was preempted by § 66427.5 in accordance with the constitutional principle of preemption set forth in Cal. Const., art. XI, § 7. The ordinance was expressly preempted because § 66427.5, subd. (e), limited the scope of a hearing for approval of a conversion application to the issue of compliance with § 66427.5; no minimum amount of tenant support was required for approval. The court surveyed the extensive state regulation of mobilehome parks and concluded that the ordinance also was preempted by implication because the legislature had established a dominant role for the State in regulating mobilehomes and had indicated its intent to forestall local intrusion regarding conversions. Moreover, the ordinance duplicated several features of state law by requiring compliance with state reporting requirements.

OUTCOME: The court reversed the order and remanded the cause to the trial court with directions to enter a new order declaring the ordinance invalid.

CORE TERMS: conversion, resident, mobilehome park, ordinance, subdivider, mobilehome, preemption, ownership, tenant, state law, mobile home parks, general law, map, preempted, local ordinance, rental, tentative, locality, rent, space, local authority, parcel map, household, manufactured, approve, housing, local legislation, local government, fully occupied, bona fide resident

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Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1 An appellate court's review of a trial court's order is de novo when it involves a pure issue of law. More Like This Headnote

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

HN2 For the great number of preemption issues--particularly if the emphasis is on implied preemption--the state and the local legislation must be considered together. Only by looking at both can a court know if the local law conflicts with, contradicts, or is inimical to the state law. This is an established rule of preemption analysis. More Like This Headnote

Governments > Local Governments > Duties & Powers

ATTACHMENT NO. 10.27

HN3 See Cal. Const., art. XI, § 7.

Governments > Local Governments > Ordinances & Regulations
Governments > State & Territorial Governments > Relations With Governments
HN4 A party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. Courts have been particularly reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another. The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another, then the presumption favors the validity of the local ordinance against an attack of state preemption. Thus, when local government regulates in an area over which it traditionally has exercised control, such as particular land uses, California courts will presume, absent a clear indication of preemptive intent from the legislature, that such regulation is not preempted by state statute. The presumption against preemption accords with the more general understanding that it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication. More Like This Headnote

Governments > Local Governments > Ordinances & Regulations
Governments > State & Territorial Governments > Relations With Governments
Real Property Law > Zoning & Land Use > Ordinances
HN5 The general principles governing state statutory preemption of local land use regulation are well settled. Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. Local legislation is duplicative of general law when it is coextensive therewith and contradictory to general law when it is inimical thereto. Local legislation enters an area fully occupied by general law when the legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent. There are three recognized indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that is has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. More Like This Headnote

Governments > Local Governments > Ordinances & Regulations
Governments > State & Territorial Governments > Relations With Governments
HN6 With respect to the implied occupation of an area of law by the legislature's full and complete coverage of it, where the legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme. State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation. Whenever the legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned. When a local ordinance is identical to a state statute, it is clear that the field sought to be covered by the ordinance has already been occupied by state law. More Like This Headnote

Governments > Local Governments > Ordinances & Regulations
Governments > State & Territorial Governments > Relations With Governments
HN7 To discern whether a local law has entered an area that has been fully occupied by state law according to the recognized indicia of intent requires an analysis that is based on an overview of the topic addressed by the two laws. In determining whether the legislature has preempted by implication to the exclusion of local regulation, a court must look to the whole scope of the legislative scheme. Such an examination is made with the goal of detecting a patterned approach to the subject, and whether the local law mandates what state law forbids, or forbids what state law mandates. More Like This Headnote

Real Property Law > Mobilehomes & Mobilehome Parks > Subdivisions
HN8 See Gov. Code, § 66427.5.

Real Property Law > Mobilehomes & Mobilehome Parks > Subdivisions
HN9 Under Gov. Code, § 66427.5, subd. (e), a city council only has the power to determine if a subdivider has complied with the requirements of the section. Although the conversion process might be used for improper purposes--such as the bogus purchase of a single unit by the subdivider/owner to avoid local rent control--the language of § 66427.5, subd. (e), does not allow such considerations to be taken into account. A city lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves a tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the legislature to broaden a city's authority, it has not done so. The argument that the legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one. More Like This Headnote

ATTACHMENT NO. 10-28

Real Property Law > Mobilehomes & Mobilehome Parks > Subdivisions

HN10 Case law has specifically rejected arguments that would require a numerical threshold before a mobilehome park conversion could proceed, there being no statutory support for the claim that conversion only occurs if more than 50 percent of the lots have been sold before a tentative or parcel map is filed. A subdivider need not demonstrate that the proposed subdivision has the support of a majority of existing residents--fixed at either one-half or two-thirds--thus satisfying the local authority that this was not a forced conversion. The legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent. More Like This Headnote

Governments > Local Governments > Duties & Powers

Real Property Law > Zoning & Land Use > Ordinances

HN11 Regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government. More Like This Headnote

Governments > Legislation > Effect & Operation > Amendments

Governments > Legislation > Interpretation

HN12 When the legislature amends a statute without altering portions of the provision that have previously been judicially construed, the legislature is presumed to have been aware and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment. More Like This Headnote

Governments > State & Territorial Governments > Relations With Governments

Real Property Law > Mobilehomes & Mobilehome Parks > Subdivisions

Real Property Law > Zoning & Land Use > Ordinances

HN13 Gov. Code, § 66427.5, subd. (e), has the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis. More Like This Headnote

HEADNOTES / SYLLABUS Hide

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court declined to issue a writ of mandate to prohibit a county's enforcement of an ordinance that imposed obligations related to mobilehome park conversion applications that went beyond the obligations required by Gov. Code, § 66427.5. The challenged ordinance, Sonoma County Ord. No. 5725, directed an applicant seeking to convert an existing mobilehome park from a rental to a resident-owner basis to submit various reports required by state law. The ordinance also imposed criteria that had to be satisfied before the application would be presumed bona fide for purposes of approval. (Superior Court of Sonoma County, No. SCV240003, Raymond J. Giordano, Temporary Judge.*)

The Court of Appeal reversed the order and remanded the cause to the trial court with directions to enter a new order declaring the ordinance invalid. The court held that the ordinance was preempted by § 66427.5 in accordance with the constitutional principle of preemption set forth in Cal. Const., art. XI, § 7. The ordinance was expressly preempted because § 66427.5, subd. (e), limits the scope of a hearing for approval of a conversion application to the issue of compliance with § 66427.5; no minimum amount of tenant support is required for approval. The court surveyed the extensive state regulation of mobilehome parks and concluded that the ordinance also was preempted by implication because the Legislature has established a dominant role for the state in regulating mobilehomes and has indicated its intent to forestall local intrusion regarding conversions. Moreover, the ordinance duplicated several features of state law by requiring compliance with state reporting requirements. (Opinion by Richman, J., with Haerle, Acting P. J., and Lambden, J., concurring.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Municipalities § 55—Ordinances—Validity—Conflict with Statutes—Considering State and Local**

ATTACHMENT NO. 10.29

Legislation Together.—For the great number of preemption issues--particularly if the emphasis is on implied preemption--the state and the local legislation must be considered together. Only by looking at both can a court know if the local law conflicts with, contradicts, or is inimical to the state law. This is an established rule of preemption analysis.

CA(2)**(2) Municipalities § 55—Ordinances—Validity—Conflict with Statutes—Presumption Against Preemption.**—A party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. Courts have been particularly reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another. The common thread of the cases is that if there is a significant local interest to be served that may differ from one locality to another, then the presumption favors the validity of the local ordinance against an attack of state preemption. Thus, when local government regulates in an area over which it traditionally has exercised control, such as particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute. The presumption against preemption accords with the more general understanding that it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.

CA(3)**(3) Municipalities § 56—Ordinances—Validity—Conflict with Statutes—Test for Preemption—Indicia of Intent.**—The general principles governing state statutory preemption of local land use regulation are well settled. Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. Local legislation is duplicative of general law when it is coextensive therewith and contradictory to general law when it is inimical thereto. Local legislation enters an area fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent. There are three recognized indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that is has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

CA(4)**(4) Municipalities § 56—Ordinances—Validity—Conflict with Statutes—Test for Preemption—Indicia of Intent—Area Fully Occupied by State Law.**—With respect to the implied occupation of an area of law by the Legislature's full and complete coverage of it, where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme. State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation. Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned. When a local ordinance is identical to a state statute, it is clear that the field sought to be covered by the ordinance has already been occupied by state law.

CA(5)**(5) Municipalities § 56—Ordinances—Validity—Conflict with Statutes—Test for Preemption—Indicia of Intent—Area Fully Occupied by State Law.**—To discern whether a local law has entered an area that has been fully occupied by state law according to the recognized indicia of intent requires an analysis that is based on an overview of the topic addressed by the two laws. In determining whether the Legislature has preempted by implication to the exclusion of local regulation, a court must look to the whole scope of the legislative scheme. Such an examination is made with the goal of detecting a patterned approach to the subject, and whether the local law mandates what state law forbids, or forbids what state law mandates.

CA(6)**(6) Mobile Homes, Trailers, and Parks § 3—Regulation—Conversion from Rental to Resident-owned—Local Regulation Preempted.**—Under Gov. Code, § 66427.5, subd. (e), a city council only has the power to determine if a subdivider has complied with the requirements of the section. Although the conversion process might be used for improper purposes--such as the bogus purchase of a single unit by the subdivider/owner to avoid local rent control--the language of § 66427.5, subd. (e), does not allow such considerations to be taken into account. A city lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves a tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden a city's authority, it has not done so. The argument that the Legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one.

CA(7)**(7) Mobile Homes, Trailers, and Parks § 3—Regulation—Conversion from Rental to Resident-owned.**—Case law has specifically rejected arguments that would require a numerical threshold before a mobilehome park conversion could proceed, there being no statutory support for the claim that conversion only occurs if more than 50 percent of the lots have been sold before a tentative or parcel map is filed. A subdivider need not demonstrate that the proposed subdivision has the support of a majority of existing residents--fixed at either one-half or two-thirds--thus satisfying the local authority that this was not a forced conversion. The legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent.

CA(8)**(8) Zoning and Planning § 3—Authority for Regulation—Traditional Local Power.**—Regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government.

CA(9)**(9) Statutes § 26—Construction—Adopted and Reenacted Statutes—Legislative Acquiescence in Judicial Construction.**—When the Legislature amends a statute without altering portions of the provision that have previously

been judicially construed, the Legislature is presumed to have been aware and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment.

CA(10)**(10) Mobile Homes, Trailers, and Parks § 3—Regulation—Conversion from Rental to Resident-owned—Local Regulation Preempted.**—Gov. Code, § 66427.5, subd. (e), has the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis.

CA(11)**(11) Mobile Homes, Trailers, and Parks § 3—Regulation—Conversion from Rental to Resident-owned—Local Regulation Preempted.**—It could be assumed that a county was motivated by laudable purposes when it enacted an ordinance that imposed obligations upon a subdivider submitting a mobilehome park conversion application that went beyond the obligations required by Gov. Code, § 66427.5. The county's construction of § 66427.5 also could find some plausibility from the statutory language. Nevertheless, the ordinance crossed the line established by the Legislature as marking territory reserved for the state and thus was expressly preempted by § 66427.5.

[Cal. Real Estate Law & Practice (2009), ch. 472, § 472.35; Cal. Forms of Pleading and Practice (2009), ch. 126A, Constitutional Law, § 126A.24.]

COUNSEL: Bien & Summers, Elliot L. Bien and Catherine Meulemans for Plaintiff and Appellant.

The Loftin Firm, L. Sue Loftin and Michael Stump for Amici Curiae Rancho Sonoma Partners, Eden Gardens, Sundance Estates and Capistrano Shores on behalf of Plaintiff and Appellant.

Steven M. Woodside, County Counsel, Sue A. Gallagher and Debbie F. Latham, Deputy County Counsel for Defendant and Respondent.

Aleshire & Wyndner, William W. Wynder and Sunny K. Soltani for Amici Curiae The California State Association of Counties, The League of California Cities, The City of Carson and The City of Los Angeles on behalf of Defendant and Respondent.

JUDGES: Opinion by Richman, J., with Haerle, Acting P. J., and Lambden, J., concurring.

OPINION BY: Richman

OPINION

RICHMAN J.—One of the subjects covered by the Subdivision Map Act (Gov. Code, § 66410 et seq.) is the conversion of a mobilehome park from a rental to a resident ownership basis. One of the provisions on that subject is Government Code section 66427.5 (section 66427.5), which spells out certain steps that must be completed before the conversion application **[*2]** can be approved by the appropriate local body. Although it is not codified in the language of section 66427.5, the Legislature recorded its intent that by enacting section 66427.5 it was acting "to ensure that conversions ... are bona fide resident conversions." (Stats. 2002, ch. 1143, § 2.)

The County of Sonoma (County) enacted an ordinance with the professed aim of "implementing" the state conversion statutes. It imposed additional obligations upon a subdivider submitting a conversion application to those required by section 66427.5. The ordinance also imposed criteria that had to be satisfied by the subdivider before the application would be presumed bona fide and thus could be approved.

A mobilehome park operator brought suit to halt enforcement of the ordinance on the ground that it was preempted by section 66427.5. The trial court declined to issue a writ of mandate, concluding that the ordinance was not preempted. As will be shown, we conclude that the ordinance is expressly preempted because section 66427.5 states that the "scope of the hearing" for approval of the conversion application "shall be limited to the issue of compliance with this section." We further conclude that **[*3]** the ordinance is impliedly preempted because the Legislature, which has established a dominant role for the state in regulating mobilehomes, has indicated its intent to forestall local intrusion into the particular terrain of mobilehome conversions, declining to expand section 66427.5 in ways that would authorize local government to impose additional conditions or requirements for conversion approval. Moreover, the County's ordinance duplicates several features of state law, a redundancy that is an established litmus test for preemption. We therefore reverse the trial court's order and direct entry of a new order declaring the ordinance invalid.

BACKGROUND

On May 15, 2007, the County's Board of Supervisors unanimously enacted Ordinance No. 5725 (the Ordinance). Sequoia Park Associates (Sequoia) is a limited partnership that owns and operates a mobilehome park it desires to subdivide and convert from a rental to a resident-owner basis. Within a month of the enactment of the Ordinance, Sequoia sought to have it overturned as preempted by section 66427.5. Specifically, Sequoia combined a petition for a writ of mandate with causes of action for declaratory and injunctive relief, and damages **[*4]** for inverse condemnation of its property.

The matter of the Ordinance's validity was submitted on the basis of voluminous papers addressing Sequoia's motion for issuance of a writ of mandate. The court heard argument and filed a brief order denying Sequoia relief. The court

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concluded that section 66427.5 "largely does appear ... by its own language" to impose limits on local authority to legislate on the subject of mobilehome conversions. "However, Ordinance 5725 seems merely to comply with, and give effect to, the requirements set forth in section 66427.5 rather than imposing additional requirements. This is certainly true for the language on bona fide conversions, tenant impact reports, and even general plan requirements. It is possibly less clear regarding health and safety, but even on this issue, the Ordinance does not appear to exceed [the County's] authority since, contrary to [Sequoia's] contention, it does not intrude on the [state Department of Housing and Community Development's (HCD)] power in the area." This order is the subject of Sequoia's appeal. [1]

FOOTNOTES

[1] It is typical of the generally high quality of the briefing that the experienced appellate counsel for Sequoia does not **[*5]** treat the requirement of California Rules of Court rule 8.204(a)(2)—which directs that the appellant "explain why the order appealed from is appealable"—as satisfied with a ministerial recital of boilerplate language. He devotes more than two full pages of his opening brief to a discussion establishing that, according to *Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090, 1097–1098 [53 Cal. Rptr. 3d 402], "Although the [trial court's] order was couched as a denial of the mandate petition alone, its effect was a dismissal of Sequoia's entire action," and thus appealable as a final judgment. He also puts forward a fall-back position, based on an obvious knowledge of this court, that, if necessary, we "could also amend the order below as this division did in similar circumstances in *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 766, fn. 13 [120 Cal. Rptr. 2d 550], to specify the trial court's intent to dispose of the remaining causes of action." We conclude there is no need to amend the order because counsel's initial explanation is sound, and concurred in by the County. We mention this to note that this is the sort of attention to jurisdictional issues we would like to see, but seldom do.

DISCUSSION

The **[*6]** parties agree that HN1 our review of the trial court's order is de novo because it involves a pure issue of law, namely, whether the Ordinance is preempted by Section 66427.5. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 132 [38 Cal. Rptr. 3d 575]; *Ruble Vista Associates v. Bacon* (2002) 97 Cal.App.4th 335, 339 [118 Cal. Rptr. 2d 295].) But the parties do not agree on how far our analysis may, or should, extend.

Sequoia argues we should restrict our inquiry to the current version of section 66427.5, in particular paying no attention to an uncodified expression of the Legislature's intent passed at the same time that version was enacted. At the same time Sequoia also argues that we should look to a provision in a version of an amendment to the statute that the Legislature rejected in 2002.

The County's approach is similarly compressed: noting that because Sequoia challenged the legality of the Ordinance on its face, the County argues that our analysis must be confined to the four corners of that enactment, and nothing else. Yet the County ranges far afield in marshalling the statutes which it incorporates in its arguments, and tells us that section 66427.5 must be considered in the context **[*7]** of "entire continuum of state regulation of mobilehome park subdivisions." And the County has no hesitation in arguing that the substance of the uncodified provision actually works to the County's benefit.

Our view of our inquiry is that it is hardly as narrow as the parties believe. The authorities cited by the County involve situations where local ordinances were challenged on federal constitutional grounds (e.g., *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 [40 Cal. Rptr. 2d 402, 892 P.2d 1145] [vagueness]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 679–680 [51 Cal. Rptr. 3d 821] [equal protection]), not that they were preempted by state law. As for Sequoia's approach, it would appear feasible only if the state statute has language stating the unambiguous intent by the Legislature expressly forbidding cities and counties from acting.

CA(1) **(1)** But HN2 for the great number of preemption issues—particularly if the emphasis is on implied preemption—the state and the local legislation must be considered together. Only by looking at both can a court know if the local law conflicts with, contradicts, or is inimical to the state law. As will now be shown, this is an established rule of preemption analysis.

Principles Of Preemption

CA(2) **(2)** In California, **[*8]** preemption of local legislation by state law is a constitutional principle. HN3 "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) The standards governing our inquiry are well established. According to our Supreme Court: HN4 "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. [Citation.] We have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' [Citations.] 'The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another, then the presumption favors the validity of the local ordinance against an attack of state preemption.' [Citations.]

"Thus, when local government regulates in an area over which it traditionally has exercised control, such as ... particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, **[*9]** that

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such regulation is *not* preempted by state statute. [Citation.] The presumption against preemption accords with our more general understanding that 'it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.' [Citations.]

CA(3)(3) "Moreover, HN5the 'general principles governing state statutory preemption of local land use regulation are well settled. ... "'Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations].'" [Citation.]"

"Local legislation is 'duplicative' of general law when it is coextensive therewith and 'contradictory' to general law when it is inimical thereto. Local legislation enters an area 'fully occupied' by general law when the Legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent." [Citation.] (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149–1150 [45 Cal. Rptr. 3d 21, 136 P.3d 821], **[*10]** fn. omitted (*Big Creek*).)

There are three "recognized indicia of intent": "'(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that is has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality [citations]." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898 [16 Cal. Rptr. 2d 215, 844 P.2d 534].)

HN6CA(4)(4) "With respect to the *implied* occupation of an area of law by the Legislature's full and complete coverage of it, this court recently had this to say: '"Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme."' [Citation.] We **[*11]** went on to say: '"State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation."' [Citation.] We thereafter observed: '"Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned."' [Citation.] When a local ordinance is identical to a state statute, it is clear that '"the field sought to be covered by the ordinance has already been occupied"' by state law. [Citation.]" (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 [63 Cal. Rptr. 3d 67, 162 P.3d 583].)

HN7CA(5)(5) To discern whether the local law has entered an area that has been "fully occupied" by state law according to the "recognized indicia of intent" requires an analysis that is based on an overview of the topic addressed by the two laws. "'In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole ... scope of the legislative scheme.'" (*Big Creek, supra*, 38 Cal.4th 1139, 1157, quoting *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485 [204 Cal. Rptr. 897, 683 P.2d 1150]; **[*12]** accord, *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252, 1261 [23 Cal. Rptr. 3d 453, 104 P.3d 813]; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 751 [29 Cal. Rptr. 2d 804, 872 P.2d 143].) Such an examination is made with the goal of "'detect[ing] a patterned approach to the subject'" (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707–708 [209 Cal. Rptr. 682, 693 P.2d 261], quoting *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 862 [76 Cal. Rptr. 642, 452 P.2d 930]), and whether the local law mandates what state law forbids, or forbids what state law mandates. (*Big Creek, supra*, 38 Cal.4th 1139, 1161; *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 866 [118 Cal. Rptr. 2d 746, 44 P.3d 120].)

Sequoia sees this as a case of express preemption, although it argues in the alternative that the Ordinance also falls to the concept of implied preemption. These contentions can only be evaluated with an appreciation of the sizable body of state legislation concerning mobilehome parks.

The Extent Of State Law In The Area Of Mobilehome Regulation

Section 66427.5 does not stand alone. If the Legislature ever did leave the field of mobilehome park legislation to local control, that day is long past.

Since 1979, the state has had the Mobilehome Residency Law, which comprises almost a hundred statutes governing **[*13]** numerous aspects of the business of operating a mobilehome park. (Civ. Code, §§ 798–799.10.) There are several provisions expressly ordering localities not to legislate in designated areas, such as the content of rental agreements (Civ. Code, § 798.17, subd. (a)(1)), and establishing specified exemptions from local rent control measures. (Civ. Code, §§ 798.21, subd. (a), 798.45.) [2] By this statutory scheme, the state has undertaken to "extensively regulate [] the landlord-tenant relationship between mobilehome park owners and residents." (*Greening v. Johnson* (1997) 53 Cal.App.4th 1223, 1226 [62 Cal. Rptr. 2d 214]; accord, *SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.* (2007) 148 Cal.App.4th 663, 673 [56 Cal. Rptr. 3d 79]; *People ex rel. Kennedy v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102, 109 [3 Cal. Rptr. 3d 429].)

FOOTNOTES

2 The Mobilehome Residency Law has been construed as not otherwise preempting or precluding adoption of residential rent control. (See Civ. Code, § 1954.25; *Cacho v. Boudreau* (2007) 40 Cal.4th 341, 350 [53 Cal. Rptr. 3d

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43, 149 P.3d 473] and decisions cited.)

Even earlier, in 1967, the state enacted the Mobilehome Parks Act (Health & Saf. Code, §§ 18200–18700), which regulates the construction and installation of mobilehome parks in the state. (See *County of Santa Cruz v. Waterhouse* (2005) 127 Cal.App.4th 1483, 1489–1490 [26 Cal. Rptr. 3d 543].) **[*14]** In this act, the Legislature expressly stated that it "supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part." (Health & Saf. Code, § 18300, subd. (a).) The few exemptions from this prohibition are carefully delineated. [3]

FOOTNOTES

3 "This part shall not prevent local authorities of any city, county, or city or county, within the reasonable exercise of their police powers, from doing any of the following:

"(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses **[*15]** for mobilehome parks.

"(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted thereto.

"(3) From requiring a permit to use a manufactured home or mobilehome outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes and mobilehomes, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

"(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, under **[*16]** circumstances when this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department [i.e., the state Department of Housing and Community Development].

"(5) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park." (Health & Saf. Code, § 18300, subd. (g).)

Then there is the Mobilehomes—Manufactured Housing Act of 1980 (Health & Saf. §§ 18000–18153), which regulates the sale, licensing, registration, and titling of mobilehomes. The Legislature declared that the provisions of this measure "apply in all parts of the state and supersede" any conflicting local ordinance. (Health & Saf. Code, § 18015.) The HCD is in charge of enforcement. (Health & Saf. Code, §§ 18020, 18022, 18058.)

These statutory schemes indicate that the state is clearly the dominant actor on this stage. Under the Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with the authority to formulate "specific requirements relating to **[*17]** construction, maintenance, occupancy, use, and design" of mobilehome parks (Health & Saf. Code, § 18253; see also Health & Saf. Code §§ 18552 [HCD to adopt "building standards" and "other regulations for ... mobilehome accessory buildings or structures"], 18610 [HCD to "adopt regulations to govern the construction, use, occupancy, and maintenance of parks and lots within" mobilehome parks"], 18620 [HCD to adopt "regulations regarding the construction of buildings in parks that it determines are reasonably necessary for the protection of life and property"], 18630 [plumbing], 18640 ["toilet, shower, and laundry facilities in parks"], 18670 ["electrical wiring, fixtures, and equipment ... that it determines are reasonably necessary for the protection of life and property"].)

At present, the HCD has promulgated hundreds of regulations that are collected in chapter 2 of title 25 of the California Code of Regulations. (Cal. Code Regs, tit. 25, §§ 1000–1758.) The regulations exhaustively deal with a myriad of issues, such as "Electrical Requirements" (*id.*, 25, §§ 1130–1190), "Plumbing Requirements" (*id.*, §§ 1240–1284), "Fire Protection Standards" (*id.*, §§ 1300–1319), "Permanent Buildings" **[*18]** (*id.*, §§ 1380–1400), and "Accessory Buildings and Structures" (*id.*, §§ 1420–1520). The regulations even deal with pet waste (*id.*, § 1114) and the prohibition of cooking facilities in cabanas (*id.*, § 1462).

Once adopted, HCD regulations "shall apply to all parts of the state." (Health & Saf. Code, § 18300, subd. (a).) Mobilehomes can only be occupied or maintained when they conform to the regulations. (Health & Saf. Code, §§ 18550, 18871.) Enforcement is shared between the HCD and local governments (Health & Saf. Code, § 18300, subd. (f), 18400, subd. (a)), with HCD given the power to "evaluate the enforcement" by units of local government. (Health & Saf. Code, §

18306, subd. (a).) A locality may decline responsibility for enforcement, but if assumed and not actually performed, its enforcement power may be taken away by the HCD. (Health & Saf. Code, § 18300, subds. (b)-(e).) Local initiative is restricted to traditional police powers of zoning, setback, permit requirements, and regulating construction of utilities. (Gov. Code, § 65852.7; Health & Saf. Code, § 18300, subd. (g), quoted at fn. 3, *ante*.)

It is the state that determines which events and actions in the construction and operation **[*19]** of a mobilehome park require permits. (Health & Saf. Code, §§ 18500, 18500.5, 18500.6, 18505; Cal. Code Regs, tit. 25, §§ 1006.5, 1010, 1014, 1018, 1038, 1306, 1324, 1374.5.) Even if the locality issues the annual permit for a park to operate, a copy must be sent to the HCD. (*Id.*, §§ 1006.5, 1012.) It is the state that fixes the fees to be charged for these permits and certifications (Health & Saf. Code, §§ 18502, 18503; Cal. Code Regs, tit. 25, §§ 1008, 1020.4, 1020.7, 1025), and sets the penalties to be imposed for noncompliance. (Health & Saf. Code §§ 18504, 18700; Cal. Code Regs, tit. 25, §§ 1009, 1050, 1370.4.) Sometimes, the state assumes exclusive responsibility for certain subjects, such as for earthquake-resistant bracing systems. (Cal. Code Regs, tit. 25, § 1370.4(a).)

Additional provisions respecting mobilehome parks are in the Government Code. Cities and counties cannot decide that a mobilehome park is not a permitted use "on all land planned and zoned for residential land use as designated by the applicable general plan," though the locality "may require a use permit." (Gov. Code, § 65852.7.) "[I]t is clear that the Legislature intended to limit local authority for zoning **[*20]** regulation to the specifically enumerated exceptions [in Health and Safety Code section 18300, subdivision (g), quoted at fn. 3, *ante*] of where a mobilehome park may be located, vehicle parking, and lot lines, not the structures within the parks." (*County of Santa Cruz v. Waterhouse, supra*, 127 Cal.App.4th 1483, 1493.) A city or county must accept installation of mobilehomes manufactured in conformity with federal standards. (Gov. Code, § 65852.3, subd. (a).) Their power to impose rent control on mobilehome parks is restricted if the parks qualifies as "new construction." (Gov. Code, § 65852.11, subd. (a); cf. text accompanying fn. 2, *ante*.)

This survey demonstrates that the state has a long-standing involvement with mobilehome regulation, the extent of which involvement is, by any standard, considerable. Having outlined the size of the state's regulatory footprint, it is now time to examine the details of section 66427.5 and the Ordinance.

Section 66427.5

Section 66427.5 is a fairly straight-forward statute addressing the subject of how a subdivider shall demonstrate that a proposed mobilehome park conversion will avoid economic displacement of current tenants who do not choose to become **[*21]** a purchasing resident. In its entirety it provides as follows:

HN8 "At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

"(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

"(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

"(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

"(d)(1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

"(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' **[*22]** association, if any, that is independent of the subdivider or mobilehome park owner.

"(3) The survey shall be obtained pursuant to a written ballot.

"(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

"(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

"(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

"(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:.

"(1) As to nonpurchasing residents who are not lower income households, as defined by Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally **[*23]** recognized professional appraisal standards, in equal annual increases over a four-year period.

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"(2) As to nonpurchasing residents who are lower income households, as defined by Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

This is how section 66427.5 currently reads. But its antecedents are instructive.

The first version of section 66427.5, enacted in 1991, was no more than the first paragraph and subdivision (f) of the current version. (Stats. 1991, ch. 745, § 2.) The statute was substantially amended four years later with most of what is in the current version. The only significant variance is that the 1995 version did not contain what is now subdivision (d), specifying that the subdivider is to provide a survey of support. (Stats. 1995, ch. **[*24]** 256, § 5.) The second version of section 66427.5 was the one considered by the Court of Appeal in *El Dorado Palm Springs, Ltd., v. City of Palm Springs* (2002) 96 Cal.App.4th 1153 [118 Cal. Rptr. 2d 15] (*El Dorado*).

At issue in *El Dorado* was a mobilehome park owner's application to convert its units from rental to resident-owned. The renters opposed the conversion, ?contending that they do not have enough information to decide whether to purchase or not, and the proposed conversion is merely a sham to avoid [Palm Springs'] rent control ordinance." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1159.) The Palm Springs City Council approved the application, but made its approval subject to three conditions, requiring: "1) the use of a 'Map Act Rent Date,' defined as the date of the close of escrow of not less than 120 lots; (2) the use of a sale price established by a specified appraisal firm, the appraisal costs to be paid by [the owner-subdivider]; and (3) financial assistance to all residents in the park to facilitate their purchase of the lots underlying their mobilehomes." (*Id.* at pp. 1156–1157.)

The trial court denied the park owner's petition for a writ of administrative mandamus. The owner appealed, contending **[*25]** "that its application is governed by section 66427.5. It relies on subdivision (d) [now subdivision (e)] of that section, which states, in part, that the scope of the City Council's hearing is limited to the issue of compliance with the requirements of that section." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1157–1158.) Palm Springs took the position that the conditions were authorized by Government Code section 66427.4, subdivision (c), [4] which authorized the city council to "'require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.'" (*Id.* at p. 1158.)

FOOTNOTES

4 Subsequent statutory references are to the Government Code unless otherwise indicated.

The Court of Appeal agreed with the owner and reversed. It rejected Palm Springs' argument about section 66427.4, [5] concluding that it applied only when the mobilehome park is being converted to another use: "[I]t would not apply to conversion of a mobilehome park when the property's use as a mobilehome park is unchanged. The section would only apply if the mobilehome park was being converted to a shopping center or another **[*26]** different use of the property. In that situation, there would be 'displaced mobilehome park residents' who would need to find 'adequate space in a mobilehome park' for their mobilehome and themselves." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1161.) The court also held the language of subdivision (e) of section 66427.4 dispositive on this point. (*Id.* at pp. 1161–1163.)

FOOTNOTES

5 At all relevant times, section 66427.4 has provided:

"(a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

"(b) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

"(c) The legislative body, or an advisory agency which is authorized by local ordinance **[*27]** to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

"(d) This section establishes a minimum standard for local legislation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

"(e) This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership."

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CA(6)(6) But, and as particularly apt here, the court sustained the park owner's argument about section 66427.5, subdivision (d), concluding that HN9under it the city council "only had the power to determine if [the subdivider] had complied with the requirements of the section." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1163–1164.) Although the court did appear concerned that the conversion process might be used for improper purposes—such as the bogus purchase of a single unit by the subdivider/owner to avoid local rent control—it believed the language of section 66427.5, subdivision (d), did not allow such considerations **[*28]** to be taken into account: "[T]he City lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City's authority, it has not done so. We therefore agree with appellant that the argument that the Legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one." [6] (*Id.* at p. 1165.) And, the court later noted, "there is no evidence that [the owner's] filing of an application for approval of a tentative parcel map is not the beginning of a bona fide conversion to resident ownership." (*Id.* at p. 1174, fn. 17.)

FOOTNOTES

6 Nevertheless, the *El Dorado* court did seem to indicate that there was an available remedy for Palm Springs' fears concerning evasion of its rent control ordinance. Although local authorities could not themselves use section 66427.5 to halt "sham or failed transactions in which a single unit is sold, but no others," (*El Dorado, supra*, 96 Cal.App.4th at p. 1166, fn. 10) there was no such restriction **[*29]** on the judiciary. "[T]he courts will not apply section 66427.5 to sham or failed transactions," (*id.* at p. 1165) which the *El Dorado* court apparently equated with situations where "conversion fails" or "if the conversion is unsuccessful." (*Id.* at p. 1166.) The court also agreed with an earlier decision that held section 66427.5 does not apply unless there is an actual sale of at least one unit. (*Id.* at pp. 1166, 1177–1179, citing *Donohue v. Santa Paula West Mobile Home Park* (1996) 47 Cal.App.4th 1168 [55 Cal. Rptr. 2d 282].)

CA(7)(7) One other point of *El Dorado* is significant. HN10The court specifically rejected arguments that would require a numerical threshold before a conversion could proceed, there being no statutory support for the claim that conversion only occurred if more than 50 percent of the lots have been sold before a tentative or parcel map is filed. (*El Dorado, supra*, 96 Cal.App.4th 1153, 1172–1173) The court refused to require a subdivider to demonstrate that the proposed subdivision has the support of a majority of existing residents—fixed at either one-half or two-thirds—thus satisfying the local authority that this was not a "forced conversion." [7] (*Id.* at pp. 1181–1182.) The court concluded: "The **[*30]** legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent." (*Id.* at p. 1182.)

FOOTNOTES

7 The 50 percent argument was based on Health and Safety Code section 50781, subdivision (m), which specifies that one of the definitions of ?residential ownership" is "ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park." The argument was that "resident ownership of the park, and control of operations of the park, can occur only when the purchasing residents have the ability to control, manage and own the common facilities in the park, i.e., when 50 percent plus 1 of the lots have been purchased by the residents." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1172, 1181.) The two-thirds figure was taken from Government Code section 66428.1, which provides that "When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field **[*31]** survey is performed, the requirement for a parcel map or a tentative and final map shall be waived," subject to specified exceptions.

Following *El Dorado*, the continuing problem of mobilehome park conversion, and the phrase "bona fide," again engaged the Legislature's attention. That same year the Legislature amended section 66427.5 by adding what is now subdivision (d) and the requirement of a "survey of support of residents" whose results were to be filed with the tentative or parcel map. As it did so, the Legislature enacted the following language, but did not include it as part of section 66427.5: "It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in El Dorado Palm Springs, Ltd. V. City of Palm Springs (2002) 96 Cal.App.4th 1153 [118 Cal. Rptr. 2d 15]. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent non-bona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without **[*32]** the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions." (Stats. 2002, ch. 1143, § 2.) [8]

FOOTNOTES

8 This is what is known as "plus section," which our Supreme Court termed "a provision of a bill that is not intended to be a substantive part of the code section or general law that the bill enacts, but to express the Legislature's view on

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some aspect of the operation or effect of the bill. Common examples of 'plus sections' include severability clauses, savings clauses, statements of the fiscal consequences of the legislation, provisions giving the legislation immediate effect or a delayed operative date or a limited duration, and provisions declaring an intent to overrule a specific judicial decision or an intent not to change existing law." (*People v. Allen* (1999) 21 Cal.4th 846, 858-859, fn. 13 [89 Cal. Rptr. 2d 279, 984 P.2d 486].) The court subsequently explained that "statements of the intent of the enacting body ... , while not conclusive, are entitled to consideration. [Citations.] Although such statements in an uncodified section **[*33]** do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute." (*People v. Canty* (2004) 32 Cal.4th 1266, 1280 [14 Cal. Rptr. 3d 1, 90 P.3d 1168].)

The Ordinance

The Ordinance has eight sections, but only three—sections I, II, and III—are pertinent to this appeal. [9]

FOOTNOTES

[9] Section IV of the Ordinance declares that the measure is "categorically exempt from environmental review" under the California Environmental Quality Act. Section V is a severability provision. Section VI establishes the effective date of the Ordinance as "30 days after the date of its passage." Section VII repeals an existing ordinance. Section VIII (mislabeled as "Section VI") provides for publication of the Ordinance in a specified newspaper of general circulation in the county.

Section I declares the purposes of the Ordinance. It opens with the supervisors' finding that "the adoption of this Ordinance is necessary and appropriate to implement certain policies and programs set forth within the adopted General Plan Housing Element, and to comply with state laws related to the conversion of mobile home parks to resident ownership. Specific purposes included: (1) "To implement state **[*34]** laws with regard to the conversion of mobile home parks to resident ownership;" (2) "To ensure that conversions of mobile home parks to resident ownership are bona fide resident conversions in accordance with state law;" (3) To implement the goals and policies of the General Plan Housing Element; (4) "To balance the need for increased homeownership opportunities with the need to protect existing rental housing opportunities;: (5) "To provide adequate disclosure to decision-makers and to prospective buyers prior to conversion of mobile home parks to resident ownership;" (6) "To ensure the public health and safety in converted parks; and" (7) "To conserve the County's affordable housing stock."

Section II deals with the "Applicability" of the Ordinance by declaring that "These provisions apply to all conversions of mobile home parks to resident ownership, except those conversions for which mapping requirements have been waived pursuant to Government Code [Section] 66428.1 These provisions do not apply to the conversion of a mobile home park to an alternate use, which conversions are regulated by Government Code Sections 65863.7 and 66427.4, and by Section 26-92-090 of Chapter 26 of the **[*35]** Sonoma County Code."

Section III opens by providing several definitions of terms used in the Ordinance and in Chapter 25 of the Sonoma County Code.

"'**Mobile Home Park Conversion to Resident Ownership** means the conversion of a mobile home park composed of rental spaces to a condominium or common interest development, as described in and/or regulated by Government Code Sections 66427.5 and/or 66428.1.'"

"'**Mobile Home Park Closure, Conversion or Change of Use** means changing the use of a mobile home park such that it no longer contains occupied mobile or manufactured homes, as described in and regulated by Government Code Section 66427.4.' "

"'**Subdivision**' means the division of any improved or unimproved land, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, financing, conveyance, transfer, or any other purpose, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. Subdivision includes a condominium project or common interest development, as defined in Section 1351 of the Civil Code or a community interest project, **[*36]** as defined in Section 11004 of the Business and Professions Code. Any conveyance of land to a governmental agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels.'"

The heart of the Ordinance is subdivision (d) of Section III, which adds "a new Article IIIB" to Chapter 25 of the Sonoma County Code. Because of its importance, we quote it in full:

"Article IIIB. Mobile Home Park Conversions to Resident Ownership.

"25-39.7 (a). Applicability. The provisions of this Article XIIIB shall apply to all conversions of mobile home parks to resident ownership except those conversions for which mapping requirements have been waived pursuant to Government Code § 66428.1.

"25-39.7 (b). Application Materials Required.

"(1) In addition to any other information required by this Code and/or other applicable law, the following information is required at the time of filing of an application for conversion of a mobile home park to resident ownership:

"a) A survey of resident support conducted in compliance with subdivision (d) of Government Code Section 66427.5 The subdivider shall demonstrate that the survey was conducted in accordance **[*37]** with an agreement between the subdivider and an independent resident homeowners association, if any, was obtained pursuant to a written ballot, and was conducted so that each occupied mobile home space had one vote. The completed survey of resident support ballots shall be submitted with the application. In the event that more than one resident homeowners association purports to represent residents in the park, the agreement shall be with the resident homeowners association which represented the greatest number of resident homeowners in the park.

"b) A report on the impact of the proposed conversion on residents of the mobile home park. The tenant impact report shall, at a minimum include all of the following:

"i) Identification of the number of mobile home spaces in the park and the rental rate history for each such space over the four years prior to the filing of the application;

"ii) Identification of the anticipated method and timetable for compliance with Government Code Section 66427.5 (a), and, to the extent available, identification of the number of existing tenant households expected to purchase their units within the first four (4) years after conversion;

"iii) Identification **[*38]** of the method and anticipated time table for determining the rents for non-purchasing residents pursuant to Government Code Section 66427.5 (f)(1), and, to the extent available, identification of tenant households likely to be subject to these provisions;

"iv) Identification of the method for determining and enforcing the controlled rents for non-purchasing households pursuant to Government Code Section 66427.5 (f)(2), and, to the extent available, identification of the number of tenant households likely to be subject to these provisions;

"v) Identification of the potential for non-purchasing residents to relocate their homes to other mobile home parks within Sonoma County, including the availability of sites and the estimated cost of home relocation;

"vi) An engineer's report on the type, size, current condition, adequacy and remaining useful life of common facilities located within the park, including but not limited to water systems, sanitary sewer, fire protection, storm water, streets, lighting, pools, playgrounds, community buildings and the like. A pest report shall be included for all common buildings and structures. 'Engineer' means a registered civil or structural engineer, **[*39]** or a licensed general engineering contractor;

"vii) If the useful life of any of the common facilities or infrastructure is less than thirty (30) years, a study estimating the cost of replacing such facilities over their useful life, and the subdivider's plan to provide funding for the same;

"viii) An estimate of the annual overhead and operating costs of maintaining the park, its common areas and landscaping, including replacement costs as necessary, over the next thirty (30) years, and the subdivider's plan to provide funding for the same.

"ix) Name and address of each resident, and household size.

"x) An estimate of the number of residents in the park who are seniors or disabled. An explanation of how the estimate was derived must be included.

"(c) A maintenance inspection report conducted on site by a qualified inspector within the previous twelve (12) calendar months demonstrating compliance with Title 25 of the California Code of Regulations ('Title 25 Report'). Proof of remediation of any Title 25 violations shall be confirmed in writing by the California Department of Housing and Community Development (HCD).

"25-39.7 (c) Criteria for Approval of Conversion Application.

"(1) An application **[*40]** for the conversion of a mobile home park to resident ownership shall be approved only if the decision maker finds that:

"a) A survey of resident support has been conducted and the results filed with the Department in accordance with the requirements of Government Code Section 66427.5 and this Chapter;

"b) A tenant impact report has been completed and filed with the Department in accordance with the requirements of Government Code Section 66427.5 and this Chapter;

"c) The conversion to resident ownership is consistent with the General Plan, any applicable Specific or Area Plan, and the provisions of the Sonoma County Code;

"d) The conversion is a bona-fide resident conversion;

"e) Appropriate provision has been made for the establishment and funding of an association or corporation adequate to

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ensure proper long-term management and maintenance of all common facilities and infrastructure; and

"f) There are no conditions existing in the mobile home park that are detrimental to public health or safety, provided, however, that if any such conditions exist, the application for conversion may be approved if: (1) all of the findings required under subsections (a) through (e) are made and (2) the **[*41]** subdivider has instituted corrective measures adequate to ensure prompt and continuing protection of the health and safety of park residents and the general public.

"(2) For purposes of determining whether a proposed conversion is a bona-fide resident conversion, the following criteria shall be used:

"a) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and this Chapter shows that more than 50 percent of resident households support the conversion to resident ownership, the conversion shall be presumed to be a bona-fide resident conversion.

"b) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and with this Chapter shows that at least 20 percent but not more than 50 percent of residents support the conversion to resident ownership, the subdivider shall have the burden of demonstrating that the proposed conversion is a bona-fide resident conversion. In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success as determined by the decision-maker, is in place to convey the majority of the lots to current residents of the park within **[*42]** a reasonable period of time.

"c) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and this Chapter shows that less than 20 percent of residents support the conversion to resident ownership, the conversion shall be presumed not to be a bona-fide resident conversion.

"25-39.7 (d) Tenant Notification. The following tenant notifications are required:

"(1) Tenant Impact Report. The subdivider shall give each resident household a copy of the impact report required by Government Code Section 66427.5 (b) within fifteen (15) days after completion of such report, but in no case less than fifteen (15) days prior to the public hearing on the application for conversion. The subdivider shall also provide a copy of the report to any new or prospective residents following the original distribution of the report.

"(2) Exclusive Right to Purchase. If the application for conversion is approved, the subdivider shall give each resident household written notice of its exclusive right to contract for the purchase of the dwelling unit or space it occupies at the same or more favorable terms and conditions than those on which such unit or space shall be initially **[*43]** offered to the general public. The right shall run for a period of not less than ninety (90) days from the issuance of the subdivision public report ('white paper') pursuant to California Business and Professions Code § 11018.2, unless the subdivider received prior written notice of the resident's intention not to exercise such right.

"(3) Right to Continue Residency as Tenant. If the application for conversion is approved, the subdivider shall give each resident household written notice of its right to continue residency as a tenant in the park as required by Government Code Section 66427.5 (a)."

The Ordinance is Expressly Preempted by Section 66427.5

CA(8)**(8)** It is a given that HN11regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government. (E.g., *Big Creek, supra*, 38 Cal.4th 1139, 1151; *IT Corp. v. County of Solano* (1991) 1 Cal.4th 81, 85, 95, 99 [2 Cal. Rptr. 2d 513, 820 P.2d 1023]; *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 376 [85 Cal. Rptr. 2d 28].) We are also mindful that our Supreme Court has twice held, prior to enactment of section 66427.5, that the Subdivision Map Act did not preempt local authority to regulate residential condominium conversions. **[*44]** (*Griffin Development Co. v. City of Oxnard* (1985) 39 Cal.3d 256, 262-266 [217 Cal. Rptr. 1, 703 P.2d 339]; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 868-869 [201 Cal. Rptr. 593, 679 P.2d 27].) Given the presumption against preemption (*Big Creek, supra*, 38 Cal.4th 1139, 1149), we start by assuming that the Ordinance is valid.

However, this attitude does not long survive. The survey of state legislation already undertaken demonstrates that the state has taken for itself the commanding voice in mobilehome regulation. Localities are allowed little scope to improvise or deviate from the Legislature's script. The state's dominance was in place before the subject of mobilehome park conversion was introduced into the Subdivision Map Act in 1991. (See Stats. 1991, ch. 745, §§ 1-2, 4, adding §§ 66427.5, 66428.1, & amending § 66427.4 to cover mobilehome park conversions.) This was seven years after the State had declared itself in favor of converting mobilehome parks to resident ownership, and at the same time established the Mobilehome Park Purchase Fund from which the HCD could make loans to low-income residents and resident organizations to facilitate conversions. (Stats. 1984, ch. 1692, § 2, adding Health & Saf. Code, §§ 50780-50786.)

Although **[*45]** the Court of Appeal in *El Dorado* did not explicitly hold that section 66427.5 was an instance of express preemption, that is clearly how it read the statute. And although there is nothing in the text of section 66427.5 that at first glance looks unambiguously like a stay-away order from the Legislature to cities and counties, [10] there is no doubt that the *El Dorado* court construed the operative language as precluding addition by cities or counties. That operative language reads: "The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the [tentative or parcel] map. *The scope of the hearing shall be limited to the issue of compliance with this section.*" (§ 66427.5, subd. (e), italics added.) The italicized language is, in its own way, comprehensive. But the contrasting constructions the parties give it could not be

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more starkly divergent.

FOOTNOTES

10 Such as the provision of the Mobilehome Parks Act directing that "This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable **[*46]** to this part." (Health & Saf. Code, § 18300, subd. (a).)

According to Sequoia, section 66427.5 has an almost ministerial operation. The words of the statute "communicate unambiguously that local agencies must approve a mobilehome park subdivision map if the applicant complies with 'this section' alone." The County and supporting amici argue that section 66427.5 and *El Dorado* are not dispositive here. Indeed, they almost argue that the statute and the decision are not relevant. As they see it, section 66427.5—both before and after *El Dorado*—is a statute of very modest scope, addressing itself only to the issue of avoiding and mitigating the economic displacement of residents who will not be purchasing units when the mobilehome park is converted. All the Ordinance does, they maintain, is "implement" and flesh out the details of the Legislature's directive in a wholly appropriate fashion, leaving unimpaired the traditional local authority over land uses. As the amici state it: "Ordinance No. 5725 does not purport to impose any additional economic restrictions to preserve affordability or to avoid displacement."

We admit that there is no little attraction to the County's approach. Beginning **[*47]** with the presumption against preemption in the area of land use, it is more than a little difficult to see the Legislature as accepting that approval of a conversion plan is dependent only on the issues of resident support and the subdivider's efforts at avoiding economic displacement of nonpurchasing residents. Section 66427.5 does employ language that seems to accept, if not invite, supplementary local action. 11 For example, a subdivider is required to "file a report on the impact of the conversion upon residents," but the Legislature made no effort to spell out the contents of such a report. And there is some force to the rhetorical inquiry posed by amici: "Surely, the Legislature intended that the report have substantive content ... . [¶] ... [¶] If there can be no assurance as to the contents of the [report], it may become a meaningless exercise."

FOOTNOTES

11 The County and supporting amici note our Supreme Court stating that the Subdivision Map Act "sets suitability, design, improvement and procedural requirements [citations] and allows local governments to impose *supplemental requirements of the same kind*." (*The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 659 [175 Cal. Rptr. 336, 630 P.2d 521], italics added.) **[*48]** It must be emphasized, however, that the court's comments were made in the context of a local tax—and a decade before the subject of mobilehome park conversion began appearing in the Subdivision Map Act.

However, a careful examination of the relevant statutes extracts much of the appeal in the County's approach. There are three such statutes—sections 66247.4, 66247.5, and 66428.1. And if they are considered as a unit—which they are, as the three mobilehome conversion statutes in the Subdivision Map Act 12—a coherent logic begins to emerge.

FOOTNOTES

12 Because sections 66427.4, 66427.5, and 66428.1 all deal with the subject of mobilehome park conversions, it is appropriate to consider them together. (E.g., *Walker v. Superior Court* (1988) 47 Cal.3d 112, 124, fn. 4 [253 Cal. Rptr. 1, 763 P.2d 852]; *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526]; *In re Washer* (1927) 200 Cal. 599, 606 [254 P. 951].)

It must be recalled that the predicate of the statutory examination is a functioning park with existing tenants with all necessary permits and inspections needed for current operation. As Sequoia points out: "Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general **[*49]** plans, and subjected to applicable health and safety regulations." Moreover, the park has been inspected and relicensed on an annual basis. But the owner has decided to change. If the change is to close the park and devote the land to a different use, section 66427.4 governs. If the change is a more modest switch to residential conversion, sections 66427.5 and 66428.1 are applicable.

These statutes form a rough continuum. If the owner is planning a new use, that is, leaving the business of operating a mobilehome park, section 66427.4 (quoted in full at fn. 5, *ante*) directs the owner to prepare a report on the impact of the change to tenants or residents. (Subd. (a).) The relevant local authority "may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park" as a condition of approving or conditionally approving the change. (Subd. (c).) But in this situation—where the land use question is essentially reopened de novo—section 66427.4 explicitly authorizes local input: "This section establishes *a minimum standard for local regulation* of conversions of mobilehome **[*50]** parks into other uses *and shall not prevent a local agency from enacting more stringent measures*." (Subd. (d), italics added.)

At the other end of the continuum is the situation covered by section 66428.1, subdivision (a) of which provides: "When

at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived unless any of the following conditions exist: [¶] (1) There are design or improvement requirements necessitated by significant health or safety concerns. [¶] (2) The local agency determines that there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map. [¶] (3) The existing parcels which exist prior to the proposed conversion were not created by a recorded parcel or final map. [¶] (4) The conversion would result in the creation of more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion."

So, if the conversion essentially **[*51]** maintains an acceptable status quo, the conversion is approved by operation of law. And the locality has no opportunity or power to stop it, or impose conditions for its continued operation.

Section 66427.5 occupies the midway point on the continuum. It deals with the situation where the mobilehome park will continue to operate as such, merely transitioning from a rental to an ownership basis, and there is not two-thirds tenant support for the change—in other words, conversions that enjoy a level of tenant concurrence that does not activate the free ride authorized by section 66428.1 In those situations, the local authority enjoys less power than granted by section 66427.4, but more than conversions governed by 66428.1. It is not surprising that in this middle situation that the Legislature would see fit to grant local authorities some power, but circumscribe the extent of that power. That it what section 66427.5 does. It says in effect: Local authority, you have this power, but no more.

As previously mentioned, the Legislature amended section 66427.5 in the wake of *El Dorado*. Two features of that amendment are notable. First, the Legislature added what is now the requirement in subdivision (d) **[*52]** of a survey of tenant support for the conversion, when the level of that support does not reach the two-thirds mark at which point section 66428.1 kicks in. But the Legislature did not address the point noted in *El Dorado* that there is no minimum amount of tenant support required for a conversion to be approved. (See *El Dorado, supra*, 96 Cal.App.4th 1153, 1172–1173.) As this was the only addition to the statute, if follows that it was deemed sufficient to address the problem of "bona fide" conversions mentioned in the unmodified portion of the enactment that accompanied the amendment.

CA(9)**(9)** Second, and even more significant for our purposes, the *El Dorado* court expressly read section 66427.5 as not permitting a local authority to inject any other consideration into its decision whether to approve a subdivision conversion. [13] (*El Dorado, supra*, 96 Cal.App.4th 1153, 1163–1164, 1166, 1182.) And when it amended section 66427.5, the Legislature did nothing to overturn the *El Dorado* court's reading of the extent of local power to step beyond the four corners of that statute. This is particularly telling: HN12"[W]hen the Legislature amends a statute without altering portions of the provision that **[*53]** have previously been judicially construed, the Legislature is presumed to have been aware and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment.'" (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1156 [278 Cal. Rptr. 614, 805 P.2d 873], quoting *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734 [180 Cal. Rptr. 496, 640 P.2d 115]; accord, *People v. Meloney* (2003) 30 Cal.4th 1145, 1161 [135 Cal. Rptr. 2d 602, 70 P.3d 1023]; *People v. Ledesma* (1997) 16 Cal.4th 90, 100–101 [65 Cal. Rptr. 2d 610, 939 P.2d 1310].)

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[13] *El Dorado* is also authority for rejecting the County's attempt to narrow the scope of the section 66427.5 hearing to just the issue of tenant displacement, thereby presumably leaving other issues or concerns of the conversion application to be addressed at a different hearing. The *El Dorado* court treated the section 66427.5 hearing as the equivalent of "El Dorado's application for approval of the tentative subdivision map." (*El Dorado, supra*, 96 Cal.App.4th 1153, 1163–1164; see also *id.*, at pp. 1174 ["section 66427.5 applies to El Dorado's application for tentative map approval"], 1182 [absence of majority tenant support for conversion not dispositive because "The owner can still subdivide **[*54]** his property by following ... section 66427.5"; judgment reversed "with directions to require the City Council to promptly determine the sole issue of whether El Dorado's application for approval of a tentative parcel map complies with section 66427.5"].) Even more germane is that, to judge from the language used in the uncodified provision enacted with the amendment of section 66427.5, the Legislature clearly appeared to equate compliance with section 66427.5 with the conversion approval process.

CA(10)**(10)** The foregoing analysis convinces us that the *El Dorado* construction of section 66427.5 has stood the test of time and received the tacit approval of the Legislature. We therefore conclude that what is currently HN13subdivision (e) of section 66427.5 continues to have the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis.

The Ordinance is Impliedly Preempted

As previously shown, local law is invalid if it enters a field fully occupied by state law, or if it duplicates, contradicts, or is inimical, to state law. (*O'Connell v. City of Stockton, supra*, 41 Cal.4th 1061, 1068; **[*55]** *Big Creek, supra*, 38 Cal.4th 1139, 1150.) The three tests for implied preemption are: (1) has the issue been so completely covered by state law as to indicate that the issue is now exclusively a state concern; (2) the issue has been only partially covered by state law, but the language of the state law indicates that the state interest will not tolerate additional local input; and (3) the issue has been only partially covered by state law, but the negative impact of local legislation on the state interest is greater than whatever local benefits derive from the local legislation. (*O'Connell v. City of Stockton, supra*, at p. 1150; *Morehart v. County of Santa Barbara, supra*, 7 Cal.4th 725, 751; *People ex rel. Deukmejian v. County of Mendocino, supra*, 36 Cal.3d

476, 485.) We conclude that the County's Ordinance is also vulnerable to two of the tests for implied preemption.

The overview of the regulatory schemes touching mobilehomes undertaken earlier in this opinion demonstrates that the state's involvement is extensive and comprehensive. Grants of power to cities and counties are few in number, guarded in language, and invariably qualified in scope. Nevertheless, those grants do exist. **[*56]** Section 66427.5 shows that the state is willing to allow some local participation in some aspects of mobilehome conversion; and section 66427.4 shows that in one setting—when a mobilehome park is converted to a different use—it is virtually expected that the state role will be secondary. The first test for implied preemption cannot be established.

But the three-statute continuum discussed earlier in connection with express preemption also shows that the second and third tests for implied preemption are.

For 25 years, the state has had the policy "to encourage and facilitate the conversion of mobilehome parks to resident ownership." (Health & Saf. Code, § 50780, subd. (b).) The state is even willing to use public dollars to promote this policy. (Health & Saf. Code, § 50782 [establishing the Mobilehome Park Purchase Fund].) The state clearly has an interest in mobilehome park conversions, but is willing to have local governments occupy some role in the process. The extent of local involvement is calibrated to the situation. However, when the subject is narrowed to conversions that merely affect the change from rental to residential ownership, local involvement is strictly limited. If **[*57]** the proposed conversion has the support of two-thirds or more of the park tenants, section 66428.1 prevents the city or county from interfering except in four very specific situations. If the tenant support is less than two-thirds, section 66427.5 directs that the role of local government "shall be limited to the issue of compliance with this section." (§ 66427.5, subd. (e).)

In sum, the fact that the situations where localities could involve themselves in conversions have been so carefully delineated shows that the Legislature viewed the subject as one where the state concern would not be advanced if parochial interests were allowed to intrude. Accordingly, we conclude that the second and third tests for implied preemption are present.

There is more. "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates ... general law ... ." (*Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807–808 [100 Cal. Rptr. 609, 494 P.2d 681]; accord, *Big Creek, supra*, 38 Cal.4th 1139, 1150; *Morehart v. County of Santa Barbara, supra*, 7 Cal.4th 725, 747.) The Ordinance is plainly duplicative of section 66427.5 in several respects, as the County candidly admits: the Ordinance "sets forth minimum **[*58]** ... requirements" for the conversion application, "including: (a) submission of a survey of resident support *in compliance with section 66427.5*; (b) submission of a report on the impact of the proposed conversion on park residents *as required by section 66427.5*; and (c) submission of a copy of the annual maintenance inspection report *already required by Title 25 of the California Code of Regulations*." (Italics added.) The Ordinance also purports to require the subdivider to provide residents of the park "written notice of [the] right to continue residency as a tenant in the park as required by Government Code § 66427.5(a)" and "a copy of the impact report required by Government Code § 66427.5(b)." (Sonoma County Code, § 25-39.7(d), subs. 1, 3.)

And still more. A local ordinance is impliedly preempted if it mandates what state law forbids. (*Big Creek, supra*, 38 Cal.4th 1139, 1161; *Great Western Shows, Inc. v. County of Los Angeles, supra*, 27 Cal.4th 853, 866.) As already established, section 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application. Yet the Ordinance directs that the application shall **[*59]** be approved "only if the decision maker finds that," in addition to satisfying the survey and tenant impact report requirements imposed by section 66247.5, the application (1) "is consistent with the General Plan" and other local land and zoning use regulations; (2) demonstrates that "appropriate" financial provision has been made to underwrite and "ensure proper long-term management and maintenance of all common facilities and infrastructure"; (3) the applicant shows that there are "no conditions existing in the mobile home park that are detrimental to public health or safety"; and (4) the proposed conversion "is a bona fide resident conversion" as measured against the percentage-based presumptions established by the Ordinance. [14] (Sonoma County Code, § 25.39-7(c), subs. 1(c)–1(f), 2.) The Ordinance also requires that, following approval of the conversion application, the subdivider "shall give each resident household written notice of its exclusive right to contract for the purchase of the dwelling unit or space it occupies at the same or more favorable terms and conditions than those on which such unit or space shall be initially offered to the general public," for a period of 90 **[*60]** days "from the issuance of the subdivision public report ... pursuant to California Business and Professions Code § 11018.2." (*Id.*, § 25-39.7(d), subd. 2.)

FOOTNOTES

[14] Although it is not discussed in the briefs, a recent decision by Division Three of this district suggests these provisions might also be vulnerable to the claim that they amount to a burden of proof presumption that would be preempted by Evidence Code section 500. (See *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 751, fn. 5, 754–758 [90 Cal. Rptr. 3d 181].)

However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. The matter of just what constitutes a "bona fide conversion" according to the Ordinance appears to authorize—if not actually invite—a purely subjective inquiry, one which is not truly reduced by reference to the Ordinance's presumptions. [15] And although the Ordinance employs the mandatory "shall," it does not establish whether the presumptions are conclusive or merely rebuttable. This uncertainty is only compounded when other criteria are scrutinized. What is the financial provision that will be **[*61]** deemed "appropriate" to "ensure proper long-term management and maintenance"? Such imprecision stands in stark contrast with the clear directives in section 66427.5.

ATTACHMENT NO. 10.43

FOOTNOTES

15 That uncertainty may be illustrated by how Sequoia perceives one part of the Ordinance. With respect to instances where tenant support for conversion is between 20 percent and 50 percent, the Ordinance provides: "In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success ... is in place to convey the majority of the lots to current residents of the park within a reasonable period of time." (Sonoma County Code, § 25-39.7(c)(2)(b).) Sequoia treats this as a requirement that the subdivider come forth with "financial assistance" to assist tenants to purchase their units.

The County, ably supported by an impressive array of amici, stoutly defends its corner with a number of arguments as to why the Ordinance should be allowed to operate. The County lays particular emphasis on the need for ensuring that the conversion must comport with the General Plan, especially its housing element, because that is where the economic dislocation will be manifest, by reducing **[*62]** the inventory of low-cost housing. (See Health & Saf. Code, § 50780, subds. (a)(1) & (a)(3).) In this sense, however, section 66427.5 has a broader reach than the County perhaps appreciates, as it does make provision in subdivision (f) for helping non-purchasing lower income households to remain. In any event, we cannot read section 66427.5 as granting localities the same powers expressly enumerated in section 66427.4 that are so conspicuously absent from the plain language of section 66427.5.

CA(11)**(11)** We assume the County was motivated by the laudable purposes stated in the first section of the Ordinance. And we have acknowledged that the County's construction of the section 66427.5 can find some plausibility from the statutory language. Nevertheless, and after a most careful consideration of the arguments presented, we have concluded that the Ordinance crosses the line established by the Legislature as marking territory reserved for the state. As we recently stated in a different statutory context: "There are weighty arguments and worthy goals arrayed on each side. ... [and] ... issues of high public policy. To choose between them, or to strike a balance between them, is the essential **[*63]** function of the Legislature, not a court." (*State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 324 [76 Cal. Rptr. 3d 507].) Of course, if the Legislature disagrees with our conclusion, or if it wishes to grant cities and counties a greater measure of power, it can amend the language of section 66427.5.

DISPOSITION

The order is reversed, and the cause is remanded to the trial court with directions to enter a new order or judgment consistent with this opinion. Sequoia shall recover its costs.

Haerle, Acting P. J., and Lambden, J., concurred.

ATTACHMENT NO. 10.44

HK&C
HART, KING & COLDREN

Robert S. Coldren
rcoldren@hkclaw.com

September 2, 2009

Our File Number: 36014.112/4849-5928-8068v.1

VIA HAND DELIVERY AND E-MAIL

Planning Commission
Subdivision Committee
City of Huntington Beach ("City")
2000 Main Street
Post Office Box 190
Huntington Beach, CA 92648
Attn: Rami Talleh, Senior Planner

RE: Huntington Shorecliffs Mobile Home Park ("Park")
Application for Tentative Tract Map No. 17296 ("Application")
Objection to Staff Suggested Findings for Denial

Dear Planning Commissioners and Subdivision Committee Members:

Planners plan! It is thus difficult for planning staff to deal with the concept that their ability to require design and improvement conditions, onsite and offsite improvements, etc., has been severely limited by state law. Similarly, City Attorneys like to provide for expanded municipal jurisdiction. Thus, it is not surprising that for months, staff found various excuses to delay answering questions, obfuscate respecting submissions, reject applications, accept applications, fane ignorance that the filing constituted a request for a "vesting" tentative map, manufacture a tortured interpretation of state law to attempt to reject an application for a "vesting" tentative map, etc.

I recognize that I am unlikely to make many points with City staff by airing these concerns for the Subdivision Committee and Planning Commission. It is critical, however, that the City understands that my client is intent upon subdividing the mobilehome park, and it is consistent with state law. The Government Code specifies very clearly that the actions of local government in connection with the processing of a map for the subdivision of a mobilehome park are essentially "ministerial" in nature, and the fees exacted by the City, the demands for information, and the delaying tactics employed, as well as the currently recommended conditions, all have caused, and will continue to cause substantial damage to my client's economic interests

The extraordinary delays and magnified costs will not be tolerated any longer by my client. We have a meeting today before the Subdivision Committee, a "study session" next week before the Planning Commission, and finally, a Planning Commission hearing later this month. We have already had a number of "informal meetings" with City staff. While such intensive activity over a subdivision application might be warranted in the case of any ordinary subdivision, or even conversion, in the case of a mobilehome park subdivision, this is totally unwarranted and completely excessive. Further delays in these actions and requirements will not be tolerated.

ATTACHMENT NO. 11

The "last straw" was the last "informal meeting" we had at the City. While it was quite cordial, the City Attorney's office continued to take the position that the Assistant City Attorney had broad authority to regulate the subdivision of this mobilehome park. And this is in spite of the fact that the California Appellate courts have, only the previous few days, spoken loudly and clearly in a well reasoned 33 page published appellate court decision (*Sequoia Park Associates v. County of Sonoma*) removing all doubt (had there ever been any) that the subdivision process of a mobilehome park is, in fact, a virtually ministerial act, limited to a determination that the very rote and the mechanical requirements the Government Code section have been complied with.

We have reserved our rights respecting the processing of this application as a "vesting tentative map", and reiterate that reservation here.

We further request that the Subdivision Committee clearly articulate what it believes its jurisdiction to be, and that it acknowledge that any and all conditions that it imposes must be consistent with the requirements of the "*Sequoia*" case and the relevant Government Code sections. Further efforts to needlessly frustrate my client's subdivision process, assuming they were ever justified by a claimed uncertainty in the law, now constitute nothing more than a blatant interference with client's lawful rights.

The limits of the City's opportunity to interfere with the subdivision are clearly defined in section 66427.5 subdivision (e) of the Government Code which states:

> "The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative or parcel map. The scope of the hearing shall be limited to the issue of compliance with this section."

The words of the statute communicate unambiguously that local agencies must approve a mobilehome park subdivision map if the applicant complies with this section alone.

The "*Sequoia*" court approvingly cites the park owner's position:

> "As *Sequoia* points out: 'Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general plans, and subjected to applicable health and safety regulations.' Moreover, the park has been inspected and relicensed on an annual basis. But the owner has decided to change. If the change is to close the park and devote the land to a different use, section 66427.4 governs. If the

ATTACHMENT NO. 11.2

> change is a more modest switch to residential conversion, sections 66427.5 and 66428.1 are applicable."

Thus, it is crystal clear under case law and the statute itself that City staff is quite simply "out of bounds" when it tries to impose additional requirements for this subdivision process.

As the *Sequoia* court went on to say on page 27 of the decision:

> "So, if the conversion essentially maintains an acceptable status quo, the conversion is approved by operation of law. And the locality has not opportunity or power to stop it, or impose conditions for its continued operation."

And the court on page 27 goes on to say:

> "Section 66427.5 occupies the midway point on the continuum. It deals with the situation where the mobilehome park will continue to operate as such, merely transitioning from a rental to an ownership basis, and there is not two-thirds tenant support for the change—in other words, conversions that enjoy a level of tenant occurrence that does not activate the free ride authorized by section 66428.1. In those situations, the local authority enjoys less power than granted by section 66427.4, but more than conversions governed by 66428.1. It is not surprising that in this middle situation that the Legislature would see fit to grant local authorities some power, but circumscribe the extent of that power. That is what section 66427.5 does. It says in effect: Local authority, you have this power, but no more."

And the authority that that Government Code section confers upon local government is the authority to conduct a public hearing, to determine that the requisite survey had been done, and two or three other ministerial acts; the Government Code section does not empower the City to attempt to impose design and improvement requirements, or dictate an application that would anticipate such conditions.

The City must understand that there are consequences for blindly ignoring this Government Code section, and continuing the processing of this map as if it were not constrained by the Government Code section or the *Sequoia* decision. I am taking such a direct and pointed approach here in the hopes that someone at the City will realize that this subdivision process

ATTACHMENT NO. 11.3

must be significantly changed, and changed immediately, in order to avoid exposing the City to damages.

Two other points before addressing the specifics of the proposed Suggested Findings:

First, the applicant park owner has bent over backward to attempt to accommodate the City and staff's legitimate and reasonable concerns at every stage. For example, we have invited the fire department to work with us to enhance first responder and fire suppression in the mobilehome park and continue to be committed to do.

Secondly, we have not even met with our tenants yet to discuss the subdivision process; and yet, the City has indicated that there are substantial opposition among our residents to the subdivision process. While the residents do not have any "veto" over our right to subdivide, we want to be absolutely certain that the City understands that we are committed to meeting with our residents (the first such meeting will be next week) and ensuring that they can make an informed decision regarding the benefits of subdivision to them. Note that the letters of concern received thus far are form letters sent to the City at the request of some misinformed and apparently disgruntled residents; and, as discussed at the last meeting with staff, reflect a clear misunderstanding of the entire subdivision process. It is no wonder that they would accept the suggestion solicited in these letter, given the nature of the misinformation that they have received.

This letter objects to the enclosed Suggested Findings for Denial of the Application that were sent to the Park by the Planning Department on August 28, 2009. The Suggested Findings are based on City General Plan policies and provisions of the City's Zoning and Subdivision Ordinance relating to common open space. The Park, as it currently exists, is approved by the California Department of Housing for 309 spaces, the design and configuration of which under the HCD permit is set forth on the proposed Map.

As explained in the recent Court of Appeal decision in *Sequoia Park Associates v. County of Sonoma*, the City is barred from applying its General Plan policies or Zoning and Subdivision Ordinance provisions to the Application. State law provisions pertaining to mobilehome park design, construction, maintenance, use, operation, and subdivision, including those contained in the Subdivision Map Act and the Mobilehome Parks Act expressly and impliedly preempt the City's General Plan policies and Zoning and Subdivision Ordinance with respect to the Application.

Therefore, the Park owner applicants respectfully request that the Subdivision Committee and Planning Commission reject the Planning Department's Suggested Findings and approve the Application.

ATTACHMENT NO. 11.4

Express State Preemption of Local Agency General Plan Policies and Zoning Codes

In *Sequoia Park Associates v. County of Sonoma* 2009 Cal. App. LEXIS 1397 (Cal. App. 1st Dist. Aug. 21, 2009), the California Court of Appeal held that State law pertaining to mobilehome parks, particularly the Subdivision Map Act (Govt. Code § 66427.5 (e)), preempts application of local agency planning, zoning, subdivision and other municipal code requirements or conditions with respect to subdivision of existing rental mobilehome parks for conversion to resident ownership.

The sole requirements for approval of the Application are those contained in Government Code Section 66427.5, which simply require submission of the map, a tenant survey and a conversion impact report. Government Code Section 66427.5 (e) provides:

> The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

In *Sequoia Park Associates*, the California Court of Appeal held that County of Sonoma planning, zoning and subdivision code requirements were expressly and impliedly preempted by Government Code Section 66427.5 (e), given the comprehensive State scheme of mobilehome statutes and regulations:

> We therefore conclude that what is currently subdivision (e) of section 66427.5 continues to have the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at p. 54)

The County of Sonoma ordinance included requirements for existing mobilehome park subdivision applications that went beyond the express requirements of Government Code Section 66427.5:

> As already established, section 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application. Yet the Ordinance directs that the application shall be approved "only if the decision maker finds that," in addition to satisfying the survey and tenant

ATTACHMENT NO. 11.5

> impact report requirements imposed the section 66427.5, the application (1) "is consistent with the General Plan" and other local land and zoning use regulations, (2) demonstrates that "appropriate" financial provision has been made to underwrite and "ensure proper long-term management and maintenance of all common facilities and infrastructure"; (3) the applicant shows that there are "no conditions existing in the mobile home park that are detrimental to publish health or safety"; and (4) the proposed conversion "is a bona fide resident conversion" as measured against the percentage-based presumptions established by the Ordinance. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at pp. 58-59)

The County of Sonoma ordinance required that the subdivision be consistent with County's General Plan and provisions of the County Code. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at pp. 38-41)

The Planning Department in this situation similarly seeks to unlawfully impose requirements on the Application for compliance with the City's General Plan and Municipal Code.

State Mobilehome Law is Comprehensive and Preemptive

As the Court of Appeal concluded in *Sequoia Park Associates*, local agencies cannot add requirements based on their general plan policies or zoning code in considering applications to subdivide existing mobilehome parks for conversion to resident ownership:

> However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at p. 60)

> As will be shown, we conclude that the ordinance is expressly preempted because section 66427.5 states that the "scope of the hearing" for approval of the conversion application" shall be limited to the issue of compliance with this section." We further conclude that the ordinance is impliedly preempted because the Legislature, which has established a dominant role for the state in regulating mobilehomes, has indicated its intent to forestall local intrusion into the particular terrain of mobilehome conversions, declining to expand section 66427.5 in ways that would authorize local government to impose additional conditions or requirements

ATTACHMENT NO. 11.6

> for conversion approval. Moreover, the County's ordinance duplicates several features of state law, a redundancy that is an established litmus test for preemption. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at pp. 2-3)

The decision in *Sequoia Park Associates* was based on a thorough review by the Court of Appeal of the comprehensive State statutory scheme regarding mobilehome parks:

> Section 66427.5 does not stand alone. If the Legislature ever did leave the field of mobilehome park legislation to local control, that day is long past. (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at p. 12)

> These statutory schemes indicate that the state is clearly the dominant actor on this stage. Under the Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with the authority to formulate "specific requirements relating to construction, maintenance, occupancy, use and design" of mobilehome parks (Health & Saf. Code 18253 .... (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at pp. 16-17)

> Additional provisions respecting mobilehome parks are in the Government Code. Cities and counties cannot decide that a mobilehome park is not a permitted use "on all land planned and zoned for residential land use as designated by the applicable local plan," though the locality "may require a use permit." (Govt. Code, § 65852.7) "I[I]t is clear that the Legislature intended to limit local authority for zoning regulation to the specifically enumerated exceptions [in Heath and Safety Code section 18300, subdivision (g), quoted at fn. 3, *ante*] of where a mobilehome park may be located, vehicle parking, and lot lines, not the structures within the parks." (*County of Santa Cruz v. Waterhouse, supra*, 127 Cal.App.4th 1483, 1493) (*Sequoia Park Associates v. County of Sonoma, supra*, 2009 Cal. App. LEXIS 1397, at pp. 19-20)

The Court of Appeal, while recognizing that local agencies traditionally have broad powers to regulate land uses in their jurisdiction, concluded in *Sequoia Park Associates* that the State has taken away those powers with respect to subdivision of existing rental mobilehome parks for the purpose of conversion to resident ownership:

ATTACHMENT NO. 11.7

It is a given that regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government. ...

However, this attitude does not long survive. The survey of state legislation already undertaken demonstrates that the state has taken for itself the commanding voice in mobilehome regulation. Localities are allowed little scope to improvise or deviate from the Legislature's script. The state's dominance was in place before the subject of mobilehome park conversion was introduced into the Subdivision Map Act in 1991. (See Stats. 1991, ch. 745, §§ 1-2, 4, adding §§ 66427.5, 66428.1, & amending § 66427.4 to cover mobilehome park conversions.) This was seven years after the State had declared itself in favor of converting mobilehome parks to resident ownership, and at the same time established the Mobilehome Park Purchase Fund from which the HCD could make loans to low-income residents and resident organizations to facilitate conversions. (Stats. 1984, ch. 1692, § 2, adding Health & Saf. Code, §§ 50780-50786.) (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 43-44)

It must be recalled that the predicate of the statutory examination is a functioning park with existing tenants with all necessary permits and inspections needed for current operation. As Sequoia points out: "Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general plans, and subjected to applicable health and safety regulations." Moreover, the park has been inspected and relicensed on an annual basis. (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 48-49)

For 25 years, the state has had the policy "to encourage and facilitate the conversion of mobilehome parks to resident ownership." (Health & Saf. Code, § 50780, subd. (b).) The state is even willing to use public dollars to promote this policy (Health & Saf. Code, § 50782 [establishing the Mobilehome Park Purchase Fund].) The state clearly has an interest in mobilehome park conversions, but is willing to have local governments occupy some role in the process. The extent of local involvement is calibrated to the situation. However, when the subject is

ATTACHMENT NO. 11.8

> narrowed to conversions that merely affect the change from rental to residential ownership, local involvement is strictly limited. If the proposed conversion has the support of two-thirds or more of the park tenants, section 66428.1 prevents the city or county from interfering except in four very specific situations. If the tenant support is less than two-thirds, section 66427.5 directs that the role of local government "shall be limited to the issue of compliance with this section." (§ 66427.5, subd. (e).) (*Sequoia Park Associates v. County of Sonoma*, *supra*, 2009 Cal. App. LEXIS 1397, at pp. 56-57)

Conclusion

In conclusion, the Park owners object to the Planning Department's Suggested Findings and request that the Subdivision Committee and Planning Commission promptly move forward to approve the Application.

Very truly yours,

HART, KING & COLDREN

Robert S. Coldren

RSC/BLH/nb

Enclosure: August 28, 2009 Planning Department Suggested Findings

cc: Jennifer McGrath, City Attorney (by e-mail only)
Leonie Mulvihill, Assistant City Attorney (by e-mail only)

ATTACHMENT NO. 11.9

City of Huntington Beach Department of Planning
Subdivision Committee (September 2, 2009)

Huntington Shorecliffs Mobilehome Park
Conversion

SUGGESTED FINDINGS FOR DENIAL - TENTATIVE MAP NO. 17296:

1. The site is not physically suitable for the type and density of development. The five additional lots created in conjunction with the mobilehome park conversion cannot be provided with the minimum required common open space of 200 sq. ft. per mobilehome (total 1,000 sq. ft.). The five additional lots are proposed within an area currently used for the mobilehome park office and remnant landscaped area located at the southeast corner of the mobilehome park. Further, the existing 304 units are provided with less than the minimum required 60,800 sq. ft. common open space. The site is provided with two recreation areas totaling 23,850 sq. ft. In addition, the subdivision will create several lots with less than the minimum required side yard setbacks between manufactured homes.

2. Tentative Tract Map No. 17296 for the subdivision of approximately 39.2 acres into 309 numbered lots and 31 lettered lots for purposes of converting an existing 304 space for-rent mobilehome park and expansion of five additional lots for a total of 309 lots for ownership purposes is inconsistent with the General Plan Land Use Element designation of RMH-25 (Residential Medium-High Density – Max. 25 units per acre) on the subject property and applicable provisions of this the Huntington Beach Zoning and Subdivision Ordinance. The proposed tentative map is not consistent with the following policies of the General Plan:

   LU 9.3.2(a): Integrate public squares, mini-parks, or other landscaped elements.

   LU 9.3.2(d): Establish a common "gathering" or activity center within a reasonable walking distance of residential neighborhoods. This center may contain services such as child or adult-care, recreation, public meeting rooms, recreational facilities, small convenience commercial uses, or similar facilities.

   LU 9.3.2(e): Site common facilities around a public park or plaza to encourage a high level of community activity.

   While the existing mobile home park is currently provided with nonconforming common areas total 23,850 sq. ft., the proposed five lot expansion is not provided with the required 1,000 sq. ft. of common area intended to serve as a gathering or activity center for the existing and/or additional lots.

ATTACHMENT NO. 11.10

CITY OF HUNTINGTON BEACH

INTERDEPARTMENTAL COMMUNICATION

ECONOMIC DEVELOPMENT DEPARTMENT

TO: Rami Talleh, Senior Planner

CC: Kellee Fritzal, Economic Development Deputy Director

FROM: Luis Gomez, Economic Development Project Manger

DATE: September 15, 2009

SUBJECT: TENTATIVE TRACT MAP NO. 17296

The Economic Development Department has reviewed the proposed Tentative Tract Map No. 17296 and has the following concerns:

City-owned abutting property (APN 024-250-01) located within the Mobile Home Park is land locked and lacks access easements through the Mobile Home Park. The parcel is bounded by Frankfort Avenue to the north and Beach Boulevard to the east and is currently being leased by the applicant for RV storage. The parcel is landlocked due to a sever slopes on both street frontages. While, the parcel is currently being used by the mobile home park and is accessed via a common parking area, no reciprocal access easements are currently in place or provided as part of the proposed subdivision.

ATTACHMENT NO. 12.1